

# **EXHIBIT G**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----

	)	
Fair Isaac Corporation,	)	File No. 16-cv-1054 (DTS)
a Delaware Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Federal Insurance Company,	)	Courtroom 14W
an Indiana corporation,	)	Minneapolis, Minnesota
and ACE American Insurance	)	Monday, March 6, 2023
Company, a Pennsylvania	)	9:00 a.m.
Corporation,	)	
	)	
Defendants.	)	
	)	

-----

BEFORE THE HONORABLE DAVID T. SCHULTZ  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(JURY TRIAL PROCEEDINGS - VOLUME XI**

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

\* \* \*

APPEARANCES:

For Plaintiff:

MERCHANT & GOULD P.C.  
BY: ALLEN W. HINDERAKER  
HEATHER J. KLIEBENSTEIN  
PAIGE S. STRADLEY  
MICHAEL A. ERBELE  
JOSEPH W. DUBIS  
GABRIELLE L. KIEFER  
150 South Fifth Street, #2200  
Minneapolis, Minnesota 55402

For Defendants:

FREDRIKSON & BYRON  
BY: TERRENCE J. FLEMING  
LEAH C. JANUS  
CHRISTOPHER D. PHAM  
RYAN C. YOUNG  
PANHIA VANG  
200 South Sixth Street, #4000  
Minneapolis, Minnesota 55402

O'MELVENY &amp; MYERS LLP

BY: LEAH GODESKY  
ANTON METLITSKY  
DARYN E. RUSH  
ROXANA GUIDERO  
Times Square Tower  
7 Times Square  
New York, New York 10036

Court Reporters:

RENEE A. ROGGE, RMR-CRR  
KRISTINE MOUSSEAU, CRR-RPR  
MARIA V. WEINBECK, RMR-FCRR  
PAULA RICHTER, RMR-CRR-CRC  
United States District Courthouse  
300 South Fourth Street, Box 1005  
Minneapolis, Minnesota 55415

\* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

PAGE

<b>MICHAEL SCHRAER</b>	
Direct Examination By Ms. Janus	2253
Cross Examination By Mr. Dubis	2285
<b>ALISSA THEBERGE</b>	
Direct Examination By Ms. Janus	2303
Cross Examination By Mr. Dubis	2317
<b>OLIVER CLARK</b>	
Direct Examination By Ms. Janus	2325

March 6th, 2023

**(In open court without the Jury present.)**

THE COURT: Good morning. Please be seated.

Yeah, just give me one second. I'm just going to let you know what's coming.

Some time, probably before the break, you're going to get a set of jury instructions and a special verdict form, a verdict form. Two things: The instructions are meant to cover all contingencies about the motions, so -- one of which will be very clear because there is two alternatives. The verdict form keeps all of the questions on it.

At the end of the day, I'm going to adopt the process that other judges use, which is a representative of each party will meet with Mimi downstairs in Courtroom 9E to go over what you've been given and see if we can narrow issues.

The two caveats or -- well, the two things that I would tell you about that is, we're going to work off that set of instructions and verdict form. I will explain during the charge conference why I have not included some instructions that the parties have requested. When we do the charge conference, the things I'm interested in are, if you think I've misstated the law or if it's somehow unfair

1 to one side or the other. And that's really what the focus  
2 will be.

3 But, hopefully, that will shorten the length of  
4 the charge conference, is the point. And then, of course,  
5 tomorrow we'll also have the argument on the motions  
6 because I'll have to read FICO's briefs after court today.

7 Okay? Any questions?

8 MR. HINDERAKER: One question and one --

9 THE COURT: Yes, sir.

10 MR. HINDERAKER: For some reason, I have in my  
11 mind at one of our pretrial conferences you told us that  
12 the jury would have the instructions at the time of closing  
13 argument. Do I have that right or wrong?

14 THE COURT: Yes. Well, yes, and what I had  
15 said -- I think you might be talking about what I had  
16 suggested doing is, I instruct them, then you do the close.

17 MR. HINDERAKER: Okay.

18 THE COURT: And then they can take a hard copy  
19 back with them. They won't have the hard copy during your  
20 close.

21 MR. HINDERAKER: But they will have the  
22 instructions and receive them before the closing. Okay.  
23 That was it.

24 And then as a heads up, FICO will be filing its  
25 own -- well, we had cross motions now in response, but FICO

1 will be filing another JMOL on its behalf today.

2 THE COURT: Okay.

3 MR. HINDERAKER: Whenever, as soon as it's done,  
4 but yet today, just to let you know.

5 THE COURT: Okay. So we will deal with all of  
6 that at the end of the day tomorrow in terms of hearing the  
7 arguments.

8 Okay. Anything else?

9 MS. GODESKY: I just wanted to give the Court a  
10 sense of where we are in our case. So today we have two  
11 live witnesses, Mike Schraer and Alissa Theberge, and then  
12 we have a videotape of Oliver Clark. It's about two hours.

13 THE COURT: Okay.

14 MS. GODESKY: And then we will run out of  
15 witnesses, because our last witness is Mr. Phil Folz, who  
16 was out of the country and cannot testify before tomorrow  
17 morning.

18 THE COURT: Okay.

19 MS. GODESKY: FICO told us yesterday that they  
20 plan to have Mr. Zoltowski on rebuttal.

21 THE COURT: Okay.

22 MS. GODESKY: So I think we're on track to have  
23 two witnesses today --

24 THE COURT: Okay.

25 MS. GODESKY: -- Mr. Folz and Mr. Zoltowski

1 tomorrow, and then deal with the charge conference and the  
2 motions, it sounds like.

3 THE COURT: How approximately long will the  
4 witnesses each go tomorrow, do you think, your direct of  
5 Folz?

6 MS. GODESKY: Probably 45 minutes --

7 THE COURT: Okay.

8 MS. GODESKY: -- to an hour.

9 THE COURT: And how long do you think Zoltowski  
10 will go?

11 MS. KLIEBENSTEIN: I would expect under a half  
12 hour.

13 THE COURT: Okay. That's great. That way, I  
14 still think -- my instinct is to, even if it's at noon,  
15 send them home or send them wherever they're going Tuesday  
16 at noon, and we deal with the charge conference and the  
17 motions and then do everything Wednesday morning, because  
18 even if we start it, we're only going to get halfway  
19 through closings at best.

20 MS. GODESKY: I agree. Especially we would all  
21 appreciate an opportunity, I think, to just digest the  
22 charge and the verdict form.

23 THE COURT: Sure. Yes. Okay.

24 All right. Let's bring in the jury. Thank you.

25 Who is the first witness again?



1 MS. JANUS: Mike Schraer.

2 THE COURT: Okay.

3 THE CLERK: All rise for the jury.

4 **(Jury enters.)**

5

6 **(In open court with the Jury present.)**

7 THE COURT: Be seated, everyone.

8 All right. Ms. Janus, call your witness.

9 MS. JANUS: Thank you, Your Honor. We call  
10 Michael Schraer.

11 THE COURT: Come on up here, Mr. Schraer.

12 THE WITNESS: Good morning.

13 THE COURT: Good morning. You will raise your  
14 right hand.

15 **(Witness sworn.)**

16 THE WITNESS: Yes, sir.

17 THE COURT: Go ahead and be seated.

18 Your microphone doesn't appear to be on, so press  
19 that little button in the front. Speak into the microphone  
20 and state your full name for the record.

21 THE WITNESS: Good morning. My name is Michael  
22 Allen Schraer.

23

24

25

**(MICHAEL SCHRAER)**

**DIRECT EXAMINATION**

BY MS. JANUS:

Q. Good morning, Mr. Schraer.

A. Good morning.

Q. Who are you employed by and what is your position?

A. I work for Chubb, and I'm the chief underwriting officer for our North American Financial Lines division.

Q. What is your educational background?

A. I went to school all the through college. I'm a graduate from the University of Virginia in 1989 with an undergraduate degree in business.

Q. Prior to the merger between ACE and Chubb in 2016, who was your employer?

A. Chubb.

Q. How long have you been employed by Chubb?

A. Just a little bit over 33 and a half years.

Q. So I would like you to talk to us about what kinds of roles you've had at the company for the more than 33 and a half years that you have been there.

A. Sure. Happy to.

So I started in June of 1989 in our Philadelphia office. I was an underwriter trainee. And what that meant was, I was hired by Chubb to learn the business of underwriting. And I worked there for about a year and a

1 half. I was in our department of financial institutions at  
2 the time, and what that means is that our clients, the  
3 group of clients we were pursuing to write insurance for,  
4 were banks, insurance companies, stockbrokers, companies  
5 like that.

6 So I was there about a year and a half, went  
7 through all of our very formal training programs for weeks  
8 on end. And then after about a year and a half, I was  
9 offered a promotion to work in our Milwaukee office, so I  
10 moved out there for about three years, again financial  
11 institutions. That was a very small office. I was the  
12 department. We were there for about three years.

13 I then moved back to New York to work in our  
14 New York City office, again still in the same financial  
15 institutions division, stayed there for about ten years. I  
16 had a number of different jobs in the group at the time,  
17 but were there for ten years.

18 In 2004, so 15 years at the company, I  
19 transitioned out of the financial institutions group, went  
20 to our home office in New Jersey, and since that time I've  
21 held a number of different jobs. I ran a division that  
22 underwrote our not-for-profit clients for a period of time  
23 that -- I kept doing that and switched to focusing on  
24 special coverage called employment practices liability,  
25 where we insure companies for how they treat their

1 employees.

2 And then in the last five years, I was the chief  
3 products officer overseeing a number of people and now the  
4 chief underwriting officer, so both of those are more  
5 general jobs. They're not specific to any division or  
6 product within Chubb.

7 Q. And I would like to just place you sort of within the  
8 way that Chubb was organized prior to the merger.

9 So prior to the merger, were there three  
10 different lines of business at Chubb?

11 A. Yes. Chubb, I guess, if you were trying to simply  
12 explain it, we had a division called Chubb Personal Lines,  
13 which focused on selling insurance to people like us. So  
14 if you bought homeowner's insurance or automobile  
15 insurance, so all the clients of that customer group are  
16 people just like us.

17 We had another group called Chubb Commercial  
18 Insurance that sold property and casualty coverages. I  
19 guess the way I explain that to my friends would be it's  
20 similar what you as a person would buy. If you bought  
21 homeowner's insurance and your house burned down, and we're  
22 protecting the property, it's the same thing, but it was a  
23 manufacturer. It would be a commercial customer buying  
24 property. Or if somebody slipped and fell in your driveway  
25 and they sued you, that's liability. We sold that to

1 companies.

2 And then we had Chubb Specialty. So we had Chubb  
3 personal, right, for consumers; we had commercial for  
4 certain types of coverages; and we had Chubb Specialty,  
5 which is the group that I was in.

6 Again, we were selling to commercial companies,  
7 so corporations, organizations, not for profits, but we  
8 sold special insurance that really covered -- I think the  
9 way I would explain it would be the management of those  
10 companies. So not the things, not the property, not the  
11 automobiles, but the way that those companies manage their  
12 people or the way that they manage their shareholders. It  
13 was more about the quality of how they ran their businesses  
14 that our insurance in Chubb Specialty dealt with.

15 Q. And after the merger, was that line of business, Chubb  
16 Specialty Lines referred to as Chubb Financial Lines?

17 A. Yes. So I introduced myself before as North American  
18 Financial Lines. That's what we now call today what used  
19 to be Chubb Specialty Insurance.

20 THE COURT: Counsel, hang on one second.

21 Mr. Schraer, will you make sure to move closer or  
22 speak into the mic a little more. Thank you.

23 THE WITNESS: Is that better. Okay?

24 BY MS. JANUE:

25 Q. And then, Mr. Schraer, I left a book of slides for you

1       there on the witness stand. And I want to talk then about  
2       how specialty lines was broken down into different business  
3       units.

4               So were there different business units within  
5       specialty lines? And I would direct your attention to  
6       slide 2.

7       A. Sure. So within our specialty --

8               Is that better?

9       THE COURT: Yes.

10       THE WITNESS: Sure. Thank you.

11               Within our specialty lines division, we had sort  
12       of subgroups or subdivisions. I'd said earlier about  
13       financial institutions is where I'd started, so that was  
14       still a division all the way through, again  
15       targeting financial institutions as clients, banks,  
16       insurance companies, stockbrokers.

17               COURT REPORTER: You are talking way too fast and  
18       need to slow down.

19       THE WITNESS: Sure. A little extra coffee this  
20       morning. I'll try and slow down. Thank you.

21               So we had the financial institutions group.

22               We had transactional risk, which is a group that  
23       worked in providing insurance coverages to clients who were  
24       going through mergers and acquisitions, so companies were  
25       buying and selling parts of themselves. That was another

1 division.

2 We had management liability, which was a group  
3 that focused on selling insurance to publicly-traded  
4 companies, so that would be companies like where you can  
5 buy stock in those companies. That was a group.

6 We had a cyber and professional liability group  
7 that focused on selling unique coverages around cyber  
8 liability, like technology-based things or professional, so  
9 like if a doctor needed to buy insurance to protect himself  
10 from suits, that would be covered.

11 And then we had a private not-for-profit group  
12 that targeted clients who were privately owned, so like if  
13 I owned a manufacturer, that manufacturer is owned by me,  
14 that would be a potential client or not-for-profit  
15 organizations, like charitable groups, libraries and  
16 healthcare organizations.

17 So it was basically private not-for-profit, cyber  
18 professional liability, management liability, transactional  
19 risk and financial institutions. Five.

20 Am I going at a better pace? I'm sorry.

21 COURT REPORTER: Not particularly.

22 THE WITNESS: I will continue trying to do  
23 better. Thank you.

24 BY MS. JANUS:

25 Q. Do you know how many products were offered by specialty

lines altogether?

A. I would say amongst the five groups within Chubb specialty, probably well over 100. I don't have an exact number.

Q. So you testified that you have been working in underwriting at Chubb for more than 33 years. I would like for you to talk about what an underwriter does. And I'll direct your attention to the next slide. Have you seen this before?

A. Yes.

Q. And can you talk us through from your perspective what an underwriter does, based on your 33 and a half years at Chubb?

A. Sure. So as an underwriter, the first thing that I would try to explain to people is that we interact with independent agents and brokers. So while you might say that my job is to sell insurance, we don't deal directly with our ultimate clients. So whether it's a personal, like one of the individuals here in the jury buying personal insurance, or a bank or a charitable organization, we don't deal directly with them. We work through independent agents and brokers. They represent Chubb and dozens of hundreds of other competing companies.

So the first thing I always think about is that I have to form as an underwriter relationships with the



1 individuals at these companies so that they like to work  
2 with me, that we have a good working relationship  
3 communication-wise, that I can explain to them the benefits  
4 of my company and that they're comfortable taking me out to  
5 visit with them with our mutual potential clients.

6 So I call that, I guess, the  
7 relationship-building part of dealing with these  
8 independent agents and brokers, because that's a really  
9 important part of the business. If I can't work through  
10 them, I can't do anything because I can't contact a client  
11 directly, I can't solicit business directly, so the only  
12 way I can succeed in doing what I need to ultimately do is  
13 work through them. That's the first thing.

14 The next thing we do is we, through the  
15 independent agents and brokers, bring in submissions.  
16 Right? So they will come to us and say, Mike at Chubb, we  
17 would like you to consider looking at this perspective  
18 client for certain types of coverages." And they're going  
19 to present information to me. Just to be clear, they're  
20 doing this with a number of my competitors at the same  
21 time, frequently either a number or dozens of them, but  
22 they're going to share information with me. Some of it may  
23 come in the form of an application where the client filled  
24 out information. They may provide me with something like  
25 an annual report. They might give me the website for that

1 client where I can learn more about them. Their job is to  
2 sort of share information with us. And I take that in as  
3 an underwriter, and I analyze that, I digest it.

4 I guess the best way to say is I'm going to try  
5 to learn as much as I can about that company so I  
6 understand how they do their business. So that I guess  
7 would be the decision of, Do I, as the underwriter, want to  
8 insure that company or not. We don't have to insure every  
9 single company. So that's the first decision is, Do we  
10 want to pursue them as a client or not? And then once we  
11 make the decision yes, we do want to insure them, we then  
12 take the time to decide which products or coverages we're  
13 going to offer them; and then based upon the information  
14 we've learned about that company how we will structure  
15 those products and how we will price them. So it's a very  
16 subjective process, I guess is what I want you guys to  
17 understand.

18 And then, lastly, we would propose that back to  
19 the agent or broker. And then he or she would take that  
20 information, along with other competing proposals, and talk  
21 with the client and to decide whether or not they want to  
22 purchase the insurance from my company versus another one  
23 or not at all. Sometimes they don't buy the product at  
24 all.

25 And then if they come back and say yes, we would

1 like to select Chubb as the insurance company, then we have  
2 to turn around and take what we proposed and turn it into  
3 an insurance policy. And there is a bunch of mechanics  
4 around being able to book or recognize the premium that  
5 we're going to be collecting, issuing the policies and then  
6 getting them out the door. So that would be the  
7 underwriting process.

8 Q. And can I -- I want to follow up on one thing that you  
9 said. You said there is subjectivity in the process.

10 Can you talk a little bit more about that aspect  
11 of what an underwriter does, how it's subjective or  
12 involves sort of human judgment?

13 A. Sure. So all of the insurance coverages that my  
14 division provides are optional purchases. None of the  
15 companies that we deal with are required to buy these  
16 coverages. So I guess I would compare that to, if I was an  
17 individual and I wanted to have an automobile and drive it,  
18 I'm required to buy insurance to get a license. These  
19 coverages are very optional, number one.

20 Number two, the nature of what we're insuring is  
21 not a thing. I'm not looking and saying, oh, that's a very  
22 old automobile versus a new automobile, and you can compare  
23 that, or this is a property that's made out of wood which  
24 could burn down. This is a property made of concrete which  
25 won't. One is better or worse to insure.

1           What we're insuring is the nature of how  
2           companies do their business. Are they well run? Are they  
3           financially stable? How do they treat their employees?  
4           How do they secure their websites? So they're very  
5           subjective things that we're insuring. So the process of  
6           underwriting is very subjective because there is no right  
7           or wrong answer. It's varying shades of gray, I guess is  
8           the best way to describe it.

9           Q. So we've made it through the first three items.

10                  What about the last one, interacts with other  
11           parts of Chubb's business?

12           A. Right. So I talked about how we interact with the  
13           external independent agents and brokers in getting to the  
14           point of selling a product, an insurance product. Once  
15           it's sold, though, the product isn't really the paper. We  
16           issue a policy, like we've all seen insurance policies.  
17           Those -- that's not the product. What we're really selling  
18           is that if our client has a claim in the future, we're  
19           going to protect them. And so that would be called a  
20           claim.

21                  And I interact extensively with our claims  
22           department to make sure that what we agreed to cover or the  
23           claims we agreed to pay, would respond to or protect our  
24           clients from, did we do that, how did we do that. So there  
25           is a lot of interactions with the claims department.

1           Because the insurance policy that we issue are  
2           legal contracts, I work extensively with our lawyers in  
3           order to make sure that we're issuing the policies  
4           properly, that these contracts make sense. I'm not a  
5           lawyer. I'm just an underwriter.

6           We work with people in the actuarial department.  
7           Most people don't know what an actuary is. You can think  
8           of them as mathematicians. They spend all their time  
9           trying to analyze how we as an insurance company are  
10          performing to share advice. They sort of look backwards at  
11          our history and see how my underwriting decisions in the  
12          past, did we make good ones, did we make poor ones, and we  
13          try to learn from that. And so we interact with them a lot  
14          to understand how we are doing and should we continue to do  
15          more of the same or change.

16          And then there is a whole host of other  
17          individuals. We work with our marketing team. We put out  
18          brochures. That's part of underwriting. We have the sales  
19          group that spends a lot of time with our agents and  
20          brokers, so I might go out to lunch with somebody and just  
21          talk. So, yeah, I think that gives you the idea.

22          Q. Based on your experience, is the underwriting process  
23          all about speed?

24          A. No, I wouldn't say that at all. I think the subjective  
25          nature of it means that at times it can be quite drawn out,

1 and because, again, it's -- there is no kind of right  
2 answer, there is a lot of sometimes back and forth. It's  
3 not just like here's what we're going to do and that's it.  
4 There is negotiation. There is discussion.

5 A lot of the times, even within our organization,  
6 we have a lot of interaction between underwriters talking  
7 about what should we do, because as I was trying to explain  
8 before, it is not always obvious what is the right or the  
9 best thing to do at that moment, so we do spend a lot of  
10 time talking.

11 Q. Let's talk a little bit about training, now that we've  
12 heard about what underwriters do. Is training required at  
13 Chubb to be an underwriter?

14 A. Yes. Absolutely.

15 Q. How extensive is that training?

16 A. In the early years when we hire somebody, they're going  
17 to have weeks, not all right in a row, but they'll have  
18 many weeks of in-person training. So we'll have them into  
19 the home office, and they will be there for an entire week,  
20 eight to five, all day long, and we bring lots of people  
21 like myself in to teach them the various topics.

22 We now have a lot of online training, modules  
23 that we also do. We used to have, like when I started, I  
24 was up there for like months. Now we do a mix of Webexes,  
25 online tutorial training, but we're trying to teach them

1 the products that we sell. We're trying to teach them how  
2 to underwrite the business. We're trying to teach them how  
3 to use all the systems. We have dozens and dozens of  
4 different systems to use.

5 So it's a whole mix of all of that, but it takes  
6 a long time because, again, we're trying to teach them how  
7 to work through a very subjective process. So it's, it's a  
8 challenge to -- and most people don't come out of college  
9 or, even if we hire them from another industry, knowing how  
10 to do this.

11 Q. Do you actually run some of the trainings that  
12 underwriters take at Chubb?

13 A. I do. I have been teaching for the last 15 years, like  
14 even the last week in March this year, I guess it's a few  
15 weeks away, I'm going to be teaching -- I'll speak both in  
16 my current role as the chief underwriting officer kind of  
17 at a high level, but I'm also going to be teaching a  
18 four-hour session about other practices and liability,  
19 because one of my employees who has that coverage is on  
20 vacation, so I will be teaching that, so yea.

21 I love teaching. To me that's one of the  
22 hallmarks of Chubb; and I believe if you ask anyone in the  
23 industry, it's very well-known that we train as well or  
24 better than every other company.

25 Q. I want to shift topics a little bit to talk about

1 drivers of revenue and profit at Chubb, and I want to start  
2 by you giving a little bit more detail about what your  
3 current role at Chubb involves.

4 A. Sure. As the chief underwriting officer for financial  
5 lines, I'm involved in a lot of different parts of our  
6 business. So before what I described to you, the different  
7 subgroups of, of our group, the private not-for-profit  
8 group, the management liability, the transactional risk, I  
9 now get to interact with them in varying capacities.

10 I'm very actively involved in creating the  
11 products, the insurance policies that we sell. It's a very  
12 dynamic industry, so -- for instance, the personal auto  
13 insurance that I buy to protect my two cars that we own,  
14 that policy looks the same as it did 20 years ago. Nothing  
15 really changes.

16 In our space, again, because of the subjective  
17 nature of the coverage, the policies are constantly  
18 evolving. We're constantly reinventing them. So we're  
19 working with our legal people, our claims people, the  
20 actuaries, to understand -- our brokers and agents and  
21 clients, they ask us for things. So we spend a lot of time  
22 evolving or developing or adapting the products. That's a  
23 big part of my business.

24 I'm also part of the senior leadership in our  
25 division. From a financial standpoint, we look at the



1 results, are we doing well, are we not doing well, what can  
2 we do more of something that's really good, how do we  
3 convince our underwriters to maybe slow down and not do so  
4 much of the things that are troubling -- yes.

5 Q. Just remember to slow down.

6 A. Thank you.

7 Q. I didn't mean to cut you off if you --

8 A. No. I think it's a wide variety of things; but as I  
9 said before, I'll be involved in transactions. I'll have  
10 underwriters who have to come to me for my authority  
11 because it's a very complicated or a complex deal. So not  
12 every underwriter at Chubb can do every transaction, so  
13 sometimes they need to come a senior person like myself and  
14 review the account and get my permission, I guess is the  
15 best way to explain, or get my authority to do that deal.

16 We work with 50 states from a regulatory  
17 standpoint, so our chief compliance officer reports to me.  
18 So he is in charge of compliance, self-audit, things like  
19 that, not exciting stuff, but I work on that as well. So  
20 it's a really broad variety of things I guess is the best  
21 way to say it.

22 Q. And in your role as chief underwriting officer, is it  
23 part of your job to know what makes Chubb successful?

24 A. I believe so, yes.

25 Q. And is it for the reasons that you sort of outlined in

terms of your role, or is there more you would say about that?

A. Yeah. I mean, my, my role as a senior leader within our division is that along with a few others need to be able to direct a team of over 500 individuals as to where to go, how to do things, what to do. So it is important that we know where we want to be and where we want to go. And so, yes, if I didn't know that, we would be wandering around, I guess is the best way to say it.

Q. Take a look at the next slide in your book.

A. Can I stop for a second and just get some water?

Q. Of course. Yes.

A. Thanks. This is the one with the pillars?

Q. Yep. Yep.

A. Okay.

Q. Have you seen this before?

A. Yes, I have.

Q. And did you provide guidance and feedback in the formation of this slide?

A. Yes, I did.

Q. What does it depict?

A. It would be a visual of the different components of what we as a company and the group of employees that make up the company are doing or things that matter to how we would either generate revenue, being writing business, and

1       equally as important, earning a profit, because writing  
2       premium means you grow or shrink, but either way there is a  
3       secondary issue, which is profit. They work together. So  
4       that's what we were trying to display here.

5       Q. And can you talk about what, based on your experience  
6       of 33 and a half plus years at Chubb, what drives Chubb's  
7       revenue and profit?

8       A. Yeah. Sure. So just starting at the -- and I truly  
9       believe this is the first and most important thing, is the  
10      reputation of our company. So in my mind, if I'm selling a  
11      product to someone, could be a consumer, could be a  
12      corporation, whoever, they have to make the decision that  
13      they want to do business with my company. And I think the  
14      reputation of our company is something that they think  
15      about.

16               If we had a very bad reputation, for instance, we  
17      were in the news constantly and there were very bad things  
18      said about us or people didn't even know about us as a  
19      company, then the likelihood that no matter what I want to  
20      do, no matter how good my price is or how wonderful my  
21      products are, if they don't believe in the company, then  
22      they're not likely to want to purchase the product.

23               So reputation would be the very first thing, and  
24      that's for any company, but I think for our company in  
25      particular because we're selling a promise to pay. I'm

1 going to give you an insurance policy today, and I'm  
2 promising at some day in the future to pay a claim if you  
3 have it. So a client has to say, Will Chubb be there in  
4 the future, could be 1 year, 2 years, 10 years, 20 years  
5 later, to pay the claim and will they do it fairly. So I  
6 think that's about reputation. So without that, I like to  
7 think highly of myself, but I think that would be a  
8 problem.

9 So you can see the next two about paying claims,  
10 that's the product we sell. We don't manufacture things  
11 here. We issue insurance policies or contracts. The way  
12 I've always explained it for 33 years is, it's a promise to  
13 pay. It's a promise that if you, our client, have a claim,  
14 we will support you through the process and then we will  
15 pay the claim, if appropriate. And so paying it timely,  
16 fairly, quite frankly, being around, as I said, many years  
17 later to be able to pay the claim and doing it in a  
18 positive manner. Right? Like we've all had things where  
19 we got what we wanted, but it wasn't like we didn't like  
20 how we got it.

21 So I think that paying claims, again, that's what  
22 we sell. So if we don't do that well, it doesn't matter  
23 how cheap our client is, how broad our policies are or if  
24 they like the color or the font, it doesn't matter, because  
25 at the end of the day if what we promise to do doesn't come

1 through, we're dead.

2 Financial management. Again, many of our  
3 products have a very, very long time between when we sell  
4 the policy and when we have to perform the service of  
5 handling the claim. So if our clients don't believe that  
6 we're going to be around and financially strong to be able  
7 to make those claim payments, then, again, they might lose  
8 confidence and not choose us. So I think all of those  
9 things are important before we even get to what I do.

10 And then after that, I certainly do think when  
11 you get to sales, this matters. I have to communicate  
12 effectively with our clients and our brokers and agents  
13 about what our products do, what makes Chubb unique, why  
14 all these things matter. It's an interesting dynamic where  
15 we're asking questions of our clients, but I get asked just  
16 as many questions back, and I have to be able to represent  
17 fairly what we're about as a company.

18 And then the last two, operations just means we  
19 need to do what we're supposed to do. If we can't get our  
20 policies out for two or three years, nobody is going to be  
21 happy with it. It would be like if I bought a car today  
22 and they said, Well, we'll get it to you in two or three  
23 years, they would be very upset. So that's the team to  
24 help us with that.

25 And compliance. We're regulated by 50 states, so

1 we have to maintain compliance and good regulatory  
2 relationships. But I think all of these things together  
3 come to help us generate revenue and then make smart  
4 decisions that allow us to make a profit.

5 Q. I would like to switch years a little bit and talk  
6 about some of the applications that we have been talking  
7 about at trial. Okay?

8 A. Okay.

9 Q. And I want to start with DecisionPoint.

10 A. Okay.

11 Q. Are you familiar with the DecisionPoint application?

12 A. Yes, I am.

13 Q. How so?

14 A. I was the business sponsor when we created that  
15 capability or application or whatever you want to call it.

16 Q. What is -- what do you mean by "business sponsor"?

17 A. So when we went about building DecisionPoint, which is  
18 effectively an online tool where agents or brokers could  
19 come to Chubb and enter information into a portal and  
20 potentially get a quote, and I can talk about that a little  
21 bit more, but it was a proprietary thing we were creating  
22 from scratch. It didn't exist. We didn't buy something  
23 off the shelf.

24 So we came together as a group of people; and as  
25 I talked about a little bit earlier, we had underwriters on

1 the team to help build this. We had IT or technology, you  
2 know, Chubb employees who work on the IT side involved in  
3 the team. We had actuaries. We talked to some of the  
4 claims people. So, again, similar to what I do on the  
5 underwriting side, we had a similar group of people coming  
6 together, the different groups and departments as a project  
7 team.

8 And then within each of those groups, you kind of  
9 had a lead individual representing that group. So I'm an  
10 underwriter, so I was the lead or senior-most underwriter  
11 in that project from start to finish; and I was the  
12 business sponsor, so I would be kind of held accountable  
13 for the continuity. Maybe we had other underwriters who  
14 come in for a week, help us and then leave, but they didn't  
15 understand how the whole project worked, so my job was to  
16 be sort of that continuity throughout, point person, things  
17 like that.

18 Q. And in that role, were you and the underwriting team  
19 involved working with business analysts?

20 A. Yes. So, generally, in a project like this I'm an  
21 underwriter. I don't understand how technology works,  
22 systems, coding. I mean, I know what these words are, but  
23 we have people to do that at our company; but just in the  
24 same way that they don't understand what I do as an  
25 underwriter, I don't necessarily know how they do what they

1 do as a technologist. I don't know what the right term is.  
2 So we have business analysts who are individuals who are  
3 kind of in the middle, and they are -- to let me talk in  
4 terms of that I'm used to. I would like this type of thing  
5 to happen; I would like this behavior to happen; I would  
6 like this outcome to occur.

7 And they are able to talk to the IT people and  
8 translate that in a way that they can execute what I'm  
9 asking for, because otherwise I guess IT and underwriting  
10 people would be like this (indicating). We just don't --  
11 it's not bad. We just don't communicate well because we  
12 don't speak the same language.

13 Q. I think you mentioned briefly what DecisionPoint does.  
14 Is this a system that the insureds access, or is it just  
15 agents and brokers?

16 A. No. It would just be agents and brokers. Our clients  
17 don't know about it, don't have any access to. Just the  
18 agents and brokers.

19 Q. And are agents and brokers required to use  
20 DecisionPoint?

21 A. No, they're not. We created this as an additional way  
22 for our agents and brokers to access Chubb. Normally, and  
23 still to this day, they either e-mail us or mail us or they  
24 will come drop in our office submissions. This was just an  
25 alternative way, really an experiment, to see if they would



1 be receptive to being able to go online and enter the  
2 information themselves.

3 Q. And so if an agent or broker chooses not to use  
4 DecisionPoint, they would go through the normal process  
5 they've always used?

6 A. Yes. I mean, like I said, they would either e-mail us  
7 information, send it through the regular mail. That still  
8 does occur, surprisingly, and even at times where they will  
9 come into our office and say, here and give it to us  
10 physically. And, of course, it's not just a one-and-done.  
11 As I said before, a lot of dialogue back and forth. So  
12 even after they have initially given us information, I may  
13 ask for more. I may ask for clarification. We may have  
14 meetings with them or the clients, but, yeah, it's pretty  
15 extensive.

16 Q. If an agent or broker does use DecisionPoint, what is  
17 the outcome?

18 A. There could be --

19 Q. I guess I should ask a better question. What are the  
20 possible outcomes?

21 A. I was going to say there is multiple outcomes. They  
22 can certainly identify whether or not we can work with them  
23 on that account or not. So, for instance, if we're  
24 currently insuring a particular manufacturer today, we  
25 wouldn't allow a new agent to come forward and submit to

1 Chubb a request to provide coverage for the same thing  
2 we're already doing. That wouldn't make sense.

3 So the system is able to say, yes, you can work  
4 with Chubb or, no, there is a reason why you can't. It's  
5 not a good or bad thing. We just can't insure them twice.  
6 So it can do that.

7 It can certainly, as I talked before in the  
8 underwriting process, give them an indication about whether  
9 we would like to insure that or not. So it might say, This  
10 is not in our appetite. So if we chose not to insure zoos  
11 and they submitted a zoo, it would say, Thank you for  
12 submitting this, but Chubb is not interested in insuring  
13 zoos. If it is something that we are interested and we  
14 like to do, as they're answering the questions, they can  
15 get to a quote. And what that means is, they would have a  
16 formal presentation on the screen of both a price and terms  
17 and conditions for a policy.

18 Q. And if instead -- if the outcome was a referral, would  
19 the normal underwriting process occur at Chubb?

20 A. Yes. That would be -- there are times where it will  
21 determine that we are interested, but, for instance, maybe  
22 the client is too big for us to be able to provide a quote  
23 through this online portal, and there is a reason why, that  
24 it refers that submission to one of the human being  
25 underwriters at Chubb, who would then pick it up and take

1 it on as if it had come to them directly from the  
2 beginning. So they don't always get a quote. I just want  
3 to be clear on that.

4 Q. And you talked about this being something for agents  
5 and brokers to use. How would you characterize the  
6 adoption of DecisionPoint by agents and brokers?

7 A. I would say they limited. It's been a challenge to get  
8 them to use it, as I had mentioned before. We never  
9 mandated it. All right? So it was always an option for  
10 them to pursue. We -- and I've gotten feedback that, from  
11 agents and brokers, that if --

12 MR. DUBIS: Objection. Hearsay.

13 THE COURT: Overruled.

14 THE WITNESS: We've gotten feedback that agents  
15 and brokers realized that if they come into DecisionPoint,  
16 they're entering the data in. They're literally on a  
17 screen entering answers, as opposed to the traditional way  
18 where they would send a submission to Chubb where they  
19 would take an application that was completed by the client  
20 and just e-mail it to us. So I think from a work effort,  
21 they're doing more work.

22 They also then realized that by entering the  
23 information into Chubb's proprietary DecisionPoint, again  
24 they're only accessing Chubb through this proprietary  
25 system, the best that they can do is get a quote from

1 Chubb; whereas, if they do their traditional practice which  
2 is to take an application and a submission and e-mail it to  
3 5, 10, 50 carriers, without any effort they can get back 5,  
4 10, 50 quotes.

5 So that idea that they can -- they put more  
6 effort in and get less back has been an impediment to broad  
7 acceptance, but we still thought it was important to do  
8 this because it was an experiment. We were interested to  
9 see where it goes. We experiment with lots of things at  
10 the company. So it's -- it's been a struggle, quite  
11 frankly; and to this day, as I said, we still get the vast  
12 majority of submissions through other avenues.

13 BY MS. JANUS:

14 Q. You talked about the development process. Were you or  
15 the other underwriters that were working on the project or  
16 the actuaries aware that Blaze was going to be used in  
17 DecisionPoint when you were working on that development?

18 A. No, we were not.

19 Q. Prior to this litigation, did you know what Blaze was?

20 A. I did not know.

21 Q. As you sit here today, do you know how much of a role  
22 Blaze plays in the DecisionPoint application?

23 A. No, I don't. As I said, I'm not aware of it by name,  
24 but I don't know what role it plays or --

25 Q. Was FICO involved in the development of DecisionPoint

1 from your perspective?

2 A. No. As far as I'm concerned, the entire development  
3 process was an internal process. I'm fully an employee of  
4 Chubb. All the IT people I ever remember meeting were  
5 Chubb employees, the actuaries, the business analysts,  
6 everybody I believed was a Chubb employee.

7 Q. And have you ever met with or interacted with anyone at  
8 FICO, to your knowledge?

9 A. Not to my knowledge, no.

10 Q. I want to just talk about sort of the scope of  
11 DecisionPoint, and you alluded to this a little bit, but  
12 was DecisionPoint used in the entire Chubb organization?

13 A. No. I guess going back to a high level to the three  
14 big parts of Chubb, personal lines where we sell  
15 homeowner's insurance, never, not all. To the commercial  
16 lines group, not at all. And within the financial lines or  
17 Chubb specialty, yes; but then within that Chubb specialty  
18 or financial lines group, we had five subdivisions I talked  
19 about before. It was not in transactional risk. It was  
20 not in financial institutions. It was not in management  
21 liability. It was not in cyber. It was really just the  
22 private not-for-profit group, so a small subset of the  
23 overall company.

24 Q. And I skipped ahead a few slides, but if you take a  
25 look at the screen, is that a visual representation of

1 where DecisionPoint was actually used?

2 A. Yes. That's correct.

3 Q. And within then private not-for-profit, was the use  
4 even limited beyond that?

5 A. Yes. So in private not-for-profit, we write ten or so  
6 different coverage lines or types of insurance coverage.

7 There was only four or so that were available in  
8 DecisionPoint. And then from a type of customer, we can  
9 write everything from a tiny, tiny organization with like  
10 five employees in one location up to global corporations  
11 and everything in between.

12 DecisionPoint I guess a simple way to say it was  
13 sort of defined or the eligible size customer was very,  
14 very small in the number of employees and revenue. It  
15 would be a very small subset that would even be eligible to  
16 come through; and then even after that, depending on the  
17 way questions were answered, would they get all the way  
18 through the system.

19 Q. Did DecisionPoint impact the number of products that  
20 specialty lines generally could bring to the market?

21 A. No. It didn't add products. It was just an additional  
22 way that our agents or brokers could access us for the set  
23 of existing products.

24 Q. Have you come to learn that Blaze was ultimately taken  
25 out of DecisionPoint and replaced with a different

MICHAEL SCHRAER DIRECT  
software?

A. I was made aware there was a change. I don't know the details to it, but I was aware that there was a change.

Q. And did you notice or have you heard about any issues with the functioning of DecisionPoint with that change?

A. No. I think it's continued to work as it did before. I guess I was made aware of it in passing, but I have never heard anything from a user one way or the other that it's different.

Q. Let's shift gears and talk about Profitability Indicator. Are you aware of that application?

A. Yes, I am.

Q. How are you aware of that?

A. I was the business sponsor for that initiative as well.

Q. And so we talked about that role in connection with DecisionPoint. Was it a similar role with respect to Profitability Indicator?

A. For me personally, yes. I would say -- yes, and a similar group of whatever you want to call them, the teammates or project team, teammates in areas, but I fulfilled the same function leading the underwriting contribution towards the end outcome. Yes.

Q. And how would you characterize what Profitability Indicator does?

A. This one is a little bit more interesting to describe.

1 This was an initiative that we embarked on to -- the  
2 underwriter's role was looking for more information. We're  
3 always looking for more insight to better understand a  
4 potential client, we're looking at -- because I talked  
5 about the subjective nature of our underwriting, so we're  
6 always looking for more information. We always had lots of  
7 information, but we're always looking for more.

8 And so this was an initiative where we worked to  
9 design what we call predictive analytics. And I think the  
10 simplest way that I try and explain that would be that  
11 we're trying to look backwards at information and data that  
12 we have to try and predict what will happen in the future.  
13 It's complicated, and it's very subjective, but it's --  
14 that's what we were trying to do. And I guess in essence  
15 say, for a particular client, What's the likelihood that  
16 we're going to have claims in the future? That's really  
17 what we were trying to predict.

18 Q. Would you say that Profitability Indicator is a tool  
19 used by underwriters? Is that --

20 A. Yes. This, this is an internal tool, so our agents and  
21 brokers don't use this. This is very different from  
22 DecisionPoint. It's an internal tool. It's an additional  
23 piece of information that we make available to the  
24 underwriters, along with lots of other pieces of  
25 information that they gather either from the agents and



brokers, from interviewing the clients, from going to the Internet. It's just another piece of information, but it is a tool, if you will.

Q. One of many tools and pieces of information that an underwriter uses in connection with underwriting a policy?

A. Correct.

Q. Is Profitability Indicator used widely within Chubb?

A. Again, similar to DecisionPoint, it has nothing to do with our personal lines group. It has nothing to do with the commercial lines group. And within our Chubb specialty or financial lines group that we have been talking about, only certain portions of the divisions within that group are able to use it, because it was only designed for those certain groups.

Q. So only some of the products offered?

A. Correct. So some of the groups within the financial lines division and only some of the products that they handle.

Q. Prior to the litigation, this lawsuit, did you know that Blaze was a part of Profitability Indicator?

A. No, I did not.

Q. Did FICO participate, to your knowledge, in any way in the development of Profitability Indicator?

A. No. I know it to be a proprietary project. So individuals from Chubb working on it.

1 Q. And have you become aware, similar to DecisionPoint,  
2 that Blaze has since been removed from Profitability  
3 Indicator?

4 A. Yeah, I believe I heard something about that.

5 Q. To your knowledge, has Profitability Indicator been  
6 impacted in any way with the removal of Blaze?

7 A. No. It continues to perform as it always did.

8 MS. JANUS: Thank you, Mr. Schraer. Those are  
9 all the questions I have.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you, Ms. Janus.

12 Mr. Dubis.

13 THE WITNESS: Thank you.

14 **CROSS EXAMINATION**

15 BY MR. DUBIS:

16 Q. Good morning, Mr. Schraer.

17 A. Good morning.

18 Q. As you recall, my name is Joe Dubis. I'm an attorney  
19 representing FICO, and we met at your deposition on  
20 February 26th, 2020.

21 I have given you a binder that has a transcript  
22 from your deposition, in case we need to look at that, and  
23 then some exhibits that we may talk through our discussion  
24 here.

25 A. Okay.

1 Q. Now I wanted to just start, when you introduced  
2 yourself, you testified that before the merger, you worked  
3 for Chubb, correct?

4 A. Yes, that's what I said.

5 Q. But prior to the Chubb Corporation and ACE Limited  
6 merger, you were actually an officer for Chubb & Son,  
7 correct?

8 A. Yes, I believe I was an officer for Chubb & Son.

9 Q. So in 2014 before that merger, you were an officer for  
10 Chubb & Son?

11 A. An officer, yes.

12 Q. Okay. And as an officer, you were a senior vice  
13 president of Chubb & Son?

14 A. Yes, I believe that was the ultimate title I had.

15 Q. And what were your duties as an officer of Chubb & Son?

16 A. I didn't have any duties as an officer of Chubb & Son.

17 Q. So you were a senior vice president at Chubb & Son, but  
18 no duties?

19 A. Nothing specific to that.

20 Q. And as a senior vice president at Chubb & Son, how many  
21 people did you have report to you?

22 A. None.

23 Q. So let's turn and talk a little bit about broker and  
24 agent relationships.

25 Now, you have been an underwriter since about

1 1989, correct?

2 A. Yes. I was hired in June of 1989, that's correct.

3 Q. And hired at Chubb in 1989?

4 A. Yes, sir.

5 Q. Now, you've testified in your direct about the  
6 importance of relationships with the independent agents and  
7 brokers, correct?

8 A. Yes, I did testify to that earlier.

9 Q. And so you would agree that insurance is a  
10 relationship-driven business, correct?

11 A. I believe that's a very key part of the process, yes.

12 Q. Okay. And it would be the goal of meeting with agents  
13 and brokers to improve those relationships, correct?

14 A. Yes, amongst many other things. Yes.

15 Q. And so one of the reasons to improve those  
16 relationships is so that those agents and brokers would  
17 push clients to buy more Chubb products, correct?

18 A. Yes, to better understand our products, to represent us  
19 fairly and ultimately to look favorably upon us as an  
20 option, yes.

21 Q. Okay. Mr. Mayleben, could we look at the pillars  
22 demonstrative? It is page number 6.

23 A. That's the big book you just handed to me?

24 Q. If you open it up, I believe it might be -- you went  
25 past it. It's literally the first page.

1 A. Okay.

2 Q. You testified that you have seen this before, correct?

3 A. Yes, I did.

4 Q. And that you contributed comments to the creation of  
5 it, correct?

6 A. Yes, I did.

7 Q. Okay. I just want to make sure that we are fully  
8 understanding your role. You talked extensively about the  
9 importance of paying claims, but you have no expertise in  
10 the paying claims pillar, correct?

11 A. I don't agree with that statement. I don't work in  
12 that department. That's not my direct responsibility, but  
13 for 33 and a half years, I worked extensively with the  
14 individuals in that group in helping to understand the  
15 policies that we issued and how they interpret them, to  
16 understand the process. I talked to clients and brokers  
17 and agents about how the process works, when it's working  
18 well, when it's not working well.

19 We talked to those groups about when we're  
20 creating policies, the wording in them and how they  
21 function so that we're on the same page, because ultimately  
22 I'm issuing a policy that will be administered by them at  
23 the end of the day. So I believe I'm relatively familiar  
24 with what they do and have an extensive amount of  
25 interaction with them.

1 Q. Mr. Schraer, my question was whether you had expertise  
2 in paying claims.

3 And so you were deposed on February 26th, 2020,  
4 correct? If you turn to the first page of your deposition,  
5 I believe it has the date at the bottom.

6 A. Yes, February 26th, 2020.

7 Q. During that deposition, you were under oath to tell the  
8 truth, correct?

9 A. Correct.

10 Q. Okay. Could I have you turn to page 36 in the  
11 deposition. The pages are in the upper right-hand corner  
12 of the quadrants. Let me know when you're there.

13 A. If I could just get my glasses, please. 36, top  
14 right-hand corner, okay.

15 Q. And so if we begin at the last page of 36 at line 25,  
16 I'm going to go to page 37, 9.

17 "Question: Were you ever asked your opinion  
18 about what features should be in CIS Claims?

19 "Answer: Absolutely not.

20 "Question: You said absolutely not. Why  
21 absolutely not?

22 "Answer: Because I have nothing to do with the  
23 claims department. I'm an underwriter, meaning I would  
24 have used the system, right, as an underwriter to look up  
25 claims, but I would never have been involved in either the

1 building, development, right? It's not my area of  
2 expertise."

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. Okay. And turning back to our pillars of Chubb revenue  
6 and profit slide, I see reputation and paying claims,  
7 financial management, sales, operation, compliance,  
8 correct?

9 A. Yes.

10 Q. I don't see technology listed anywhere on this slide,  
11 correct?

12 A. No.

13 Q. Not as a pillar?

14 A. No.

15 Q. And not as a sub-pillar, correct?

16 A. Let me just look through each one. No.

17 Q. And so the 4500-plus IT professionals that Mr. Pandey  
18 identified in the combined ACE/Chubb entity must not  
19 contribute to Chubb's revenue and profits, either, correct?

20 A. I don't agree with that.

21 Q. But they're not listed anywhere on these pillars?

22 A. The words, no.

23 Q. Okay. But you would agree that technology has changed  
24 the underwriting process at Chubb, correct?

25 A. Yes. I think that's a fair statement.

1 Q. So let's switch topics and talk about Blaze Advisor.

2 So you understand that this lawsuit is broadly about FICO's  
3 Blaze Advisor software, correct?

4 A. I have been made aware of that through this litigation,  
5 yes.

6 Q. Now you testified that you didn't know what Blaze was  
7 before this lawsuit, correct, on your direct?

8 A. Correct. Yes.

9 Q. But you had heard of Blaze Advisor before this lawsuit  
10 began, correct?

11 A. I may have heard the name.

12 Q. So you --

13 A. But I don't recall either way. I mean, this was years  
14 ago.

15 Q. So in your deposition, if you could turn to page 47 --  
16 and let me know when you're there.

17 A. Okay.

18 Q. So starting with the last line of page 47 and going to  
19 line 4 of page 48.

20 "Question: Do you recall when you first heard of  
21 Blaze Advisor?

22 "Answer: I don't remember.

23 "Question: Was it before or after this lawsuit  
24 began in 2016?

25 "Answer: I would say yes. I heard it some time



1 before then."

2 Did I read it correctly?

3 A. Yes.

4 Q. And just so that we're clear, I believe I heard you  
5 testify on your direct that you don't understand how Blaze  
6 Advisor works, correct?

7 A. No. I'm sorry. Yes, that's what I said. Correct.

8 Q. Just so we're clear, you don't understand how Blaze  
9 Advisor works, correct?

10 A. No. No.

11 Q. Let's turn and talk about some of the applications.  
12 One of them is Automated Renewal Process. You're familiar  
13 with the Automated Renewal Process application, correct?

14 A. Yes, I'm familiar with it at some level, yes.

15 Q. Okay. And so the Automated Renewal Process application  
16 identifies a policy that's available to be automatically  
17 renewed, and then some portion of the process of booking,  
18 binding and issuing that policy is automated, correct?

19 A. To the best of my knowledge, I think that's part of it.  
20 I don't know if that's all of it or some of it, but those  
21 sound fair, yes.

22 Q. And so the Automated Renewal Process application gave  
23 Chubb & Son an added capability of processing renewals,  
24 correct?

25 A. Yes. It was an additional capability, and it was

specific to renewals, not new lines, yes, correct.

Q. And the business benefit of the Automated Renewal Process application was to renew policies with fewer human resources, correct?

A. I think that's a fair characterization, yes.

Q. And renewing with human -- sorry. And renewing with fewer human resources is a benefit because there are fewer renewal transactions for the individuals to touch, correct?

A. Yes, I think that's a fair statement.

Q. And the business benefit of renewing with less manpower allowed Chubb & Son to perform more transactions with the same number of people, correct?

A. More renewal transactions, yes. Yes.

Q. And then turning to the new application, the Profitability Indicator, which you talked about on your direct, correct?

A. Correct.

Q. And you said that you were the business sponsor for Profitability Indicator, correct?

A. Yes, I did say that.

Q. Okay. And you testified regarding the predictive analytics as an underwriting tool to increase the quantity and amount of information to the underwriter, correct?

A. I believe I testified that it was an additional piece of information above and beyond what we previously had, but

1 yes.

2 Q. Okay. And making more informed underwriting decisions  
3 is a business benefit, correct?

4 A. Yes, I believe the more we know, we can make better  
5 decisions, yes, or more informed decisions. Yes.

6 Q. And the underwriting group wanted that function to get  
7 more information to improve underwriting evaluation and  
8 decision-making?

9 A. Yes. I think that's a fair characterization.

10 Q. And so then another Chubb & Son application that used  
11 Blaze Advisor was DecisionPoint. And, again, you testified  
12 you were the business sponsor for DecisionPoint?

13 A. Yes, I did.

14 Q. And a purpose of DecisionPoint was to automate the  
15 process of reviewing some insurance applications, correct?

16 A. Yes. They were entering information and that was being  
17 reviewed as opposed to an application, but I think we're  
18 saying the same thing. Yes.

19 Q. And you testified that FICO was not involved in the  
20 development of the DecisionPoint application?

21 A. To the best of my knowledge, no, they were not.

22 Q. And you -- so you have no knowledge one way or the  
23 other whether Chubb & Son purchased professional services  
24 from FICO to assist with the DecisionPoint application?

25 A. No. I'm on the underwriting side. So that sounds like

1 something that, if it happened, would have been with  
2 another part of Chubb.

3 Q. So you have no knowledge one way or the other whether  
4 Chubb & Son purchased professional services related to the  
5 rule harvesting that went into the DecisionPoint  
6 application?

7 A. I don't even know what those terms are, but I don't  
8 have any knowledge of any of that.

9 Q. In 1989, when you began at Chubb, Chubb did not have  
10 the capability to renew applications and give them a rating  
11 with no touch, correct?

12 A. That is correct.

13 Q. Okay. Let's turn to Exhibit P504, which is not in  
14 evidence. And so if you turn in your book, Mr. Schraer, to  
15 P504.

16 A. That's P as in Peter zero five zero four?

17 Q. Correct.

18 Is there an objection to this exhibit?

19 MS. JANUS: I'm reviewing it.

20 THE WITNESS: Okay. I have it here in front of  
21 me.

22 MS. JANUS: No objection.

23 BY MR. DUBIS:

24 Q. Okay. Mr. Mayleben, if we could put up P0504.

25 So, Mr. Schraer, let's start just briefly at the

1 top of the first page and look at -- this is an e-mail from  
2 a Laura Suske?

3 A. Yes, that's correct.

4 Q. Do you know who Ms. Suske is?

5 A. Yes, I know who she was.

6 Q. Who is she?

7 A. She was a fellow employee at Chubb.

8 Q. Okay. And so the subject of this e-mail is,

9 "DecisionPoint release-EPL JAG changes."

10 Did I read that correct?

11 A. Yes.

12 Q. Okay. And EPL stands for employment practices  
13 liability, correct?

14 A. Yes. That's correct.

15 Q. And that JAG stands for joint accountability group,  
16 correct?

17 A. Yes. That's correct.

18 Q. Okay. Mr. Mayleben, if we could go to page 2 of this  
19 e-mail.

20 And so on page 2 here, we have an e-mail from  
21 Ms. Suske. And you see that you're the second recipient on  
22 the "to" line, correct?

23 A. Yes, I see that.

24 Q. And this e-mail has the same subject as the top e-mail,  
25 correct?

1 A. It would appear to be one continuous e-mail, yes.

2 Q. Okay. And so in this e-mail, Ms. Suske says, "Hi, good  
3 news. We have completed the rule changes for EPL that were  
4 needed as a result of JAG ahead of schedule. Myra and the  
5 QA team signed off today on testing, so we will deploy  
6 tonight, which is two days ahead of our plan. These  
7 changes were defined, analyzed, built and tested in just  
8 eight days. This demonstrates the true value of using  
9 Blaze for business rules. Thanks to all who worked on this  
10 release. Great job, team. Lori."

11 Did I read that correct?

12 A. Yes, you did.

13 Q. And then, Mr. Mayleben, if we could look at the bottom  
14 of page 1, and then we're going to go on to page 2, if we  
15 could do a side-by-side.

16 And so, again, we have an e-mail from Ms. Suske,  
17 correct? At the bottom of page 1. And you are the second  
18 recipient to that e-mail, correct?

19 A. Yes. I see that.

20 Q. Okay. And Ms. Suske writes, "Hi, I am sorry that I did  
21 not get a chance to send this e-mail yesterday. I just  
22 wanted to confirm that the changes noted below were  
23 deployed successfully on Tuesday night. Thanks, Lori."

24 Did I read that correct?

25 A. Yes, you did.

1 Q. Okay. And can we turn to Exhibit P1181, which is not  
2 yet in evidence.

3 Mr. Schraer, if you could turn to P1181. I  
4 believe it's the last document in your binder.

5 A. You said P, as in Peter, 1181?

6 Q. Correct.

7 MS. JANUS: No objection.

8 THE WITNESS: Okay. I have it in front me.

9 BY MR. DUBIS:

10 Q. Okay. And so this is an e-mail from yourself dated  
11 December 1st, 2011, correct?

12 A. Yes.

13 Q. And this has the same subject line as Exhibit P504 that  
14 we just looked at, subject DecisionPoint release-EPL JAG  
15 changes, correct?

16 A. I'm just looking back at the other one.

17 Q. Yep.

18 A. It would appear to have the same subject, yes.

19 Q. Okay. And this e-mail appears to be forwarding the two  
20 e-mails that we talked about in Exhibit P504, correct?

21 A. Can you give me a minute to read this, because now  
22 you're asking me to compare and contrast two documents?

23 Q. Yep. Let me know.

24 A. It would -- sorry -- it would appear to have portions  
25 of the first document you showed to me, but the first one

1 that had other pieces on it that are not in this one. So  
2 parts in, parts not.

3 Q. I understand. And the two e-mails that we talked about  
4 that you were included on from Exhibit P504 are included in  
5 your e-mail, which is Exhibit P1181, correct?

6 A. Yes. That is correct.

7 Q. Okay. And in your e-mail you write, "Great job to all.  
8 Thanks, Mike."

9 Did I read that correctly?

10 A. Yep, you read that correctly.

11 Q. And so you have forwarded Ms. Suske's two e-mails,  
12 correct?

13 A. I don't know whether I forwarded them or replied. I'm  
14 not sure. It's hard to tell here what happened.

15 Q. At the top of P1181, this e-mail says, "From  
16 CN=MichaelASchraer/zero equals Chubb e-mail." Did I read  
17 that correctly?

18 A. Yes.

19 Q. Do you have any reason to believe this was not an  
20 e-mail from you?

21 A. Oh, no. It's an e-mail from me. You asked me if I had  
22 forwarded it, and I'm saying I don't know if I forwarded it  
23 or replied to it, but it is an e-mail from me. I do agree  
24 with you.

25 Q. And in this e-mail from you that included Ms. Suske's



1 two e-mails in which she said, "This demonstrates the true  
2 value of using Blaze for business rules," your comment was,  
3 "Great job to all," correct?

4 A. Yes. That's what I wrote here.

5 Q. Okay. We can take that down.

6 Now you testified that agents and brokers did not  
7 like DecisionPoint, correct?

8 A. I think what I testified was that it was a challenging  
9 adoption to get them to use it or continue to use it.

10 Q. And do you have any documents to support that position?

11 A. I don't have any documents with me now, no.

12 Q. So we didn't see any documents from any of these  
13 independent agents or brokers talking about the struggle  
14 that you testified to, correct?

15 A. No. That would be conversation and discussion and  
16 things like that that we have.

17 Q. Yes, but no documents here today?

18 A. I don't have any physical documents with me, no.

19 Q. And so I just want to make sure that we're scoping your  
20 testimony directly. So you talked about the specialty  
21 lines of insurance, correct?

22 A. On a number of occasion earlier, yes, I talked about  
23 it.

24 Q. But we're not talking about Chubb commercial or Chubb  
25 personal lines, correct?

1 A. Could you be more specific? Your question before was,  
2 Did I talk about specialty lines. And I did on numerous  
3 occasion earlier. And now you're asking me a general  
4 question about the other groups. I'm not understanding  
5 your particular question.

6 Q. You're the chief underwriter for the financial lines,  
7 correct?

8 A. Yes.

9 Q. And before the merger, financial lines was specialty  
10 lines, correct?

11 A. Yes.

12 Q. And you were in the specialty lines before the merger,  
13 correct?

14 A. That is correct.

15 Q. You were not in the commercial lines?

16 A. That is correct.

17 Q. And you were not in the personal lines?

18 A. That is correct.

19 Q. Okay. And you testified that Chubb specialty has about  
20 100 products, give or take, correct?

21 A. Yes. The number changes, but I think yes is what I  
22 said before.

23 Q. Sure. And so when you're talking about DecisionPoint,  
24 you're only talking about two products, right?

25 A. Yes, two.

1 Q. So all of those other products go through the normal  
2 specialty insurance process, correct?

3 A. That is correct.

4 Q. And so if that product is built into CSI Express, those  
5 underwriters would use CSI Express for those products,  
6 correct?

7 A. I don't believe that's correct. Not all of the various  
8 products that we used in, whether it's Chubb specialty or  
9 financial lines, not all of them are processed in CSI  
10 Express.

11 Q. I understand that. That wasn't my question. But for  
12 the products that were in the CSI Express application, the  
13 standard process would be to use the CSI Express, correct?

14 A. Yeah, I think if you're saying if a product was built  
15 in CSI Express, would we then use that system to process  
16 the business? Yes.

17 Q. Okay. Thank you.

18 No further questions.

19 THE COURT: Ms. Janus?

20 MS. JANUS: Nothing further. Thank you.

21 THE COURT: All right. Thank you.

22 Mr. Schraer, you may step down. Thank you.

23 THE WITNESS: Thank you, sir. Have a nice day.

24 THE COURT: Go ahead and call your next witness.

25 MS. JANUS: We will call Alissa Theberge.

**(Witness excused.)**

THE COURT: Come on up here, Ms. Theberge. If you will raise your right hand.

**(Witness sworn.)**

THE WITNESS: I do.

THE COURT: Go ahead and sit down. State your full name for the record, and make sure to speak into the microphone.

THE WITNESS: Alissa Theberge.

**(ALISSA THEBERGE)**

**DIRECT EXAMINATION**

BY MS. JANUS:

Q. Good morning, Ms. Theberge. Who is your employer, and what is your position?

A. I work for Chubb & Son, and currently I am the underwriting services branch manager in Simsbury, Connecticut.

Q. And get a little bit closer to the mic.

A. Okay.

Q. Thank you. And actually you can move it, too, if it's easier for you.

What is your educational background?

A. I graduated from Providence College in 1998 with a degree in economics.

Q. Prior to the merger between ACE and Chubb, who was your

1 employer?

2 A. I worked for Chubb.

3 Q. How long have you been employed by Chubb?

4 A. I have been at Chubb since 1998. I started at a  
5 company in Connecticut called Executive Risk. That was,  
6 right after I started, acquired by Chubb. So I have worked  
7 for the entire time of my insurance career for Chubb.

8 Q. And if I'm doing the math right, that's about 24 years?

9 A. Correct.

10 Q. During your 24 years at Chubb, can you talk with us  
11 generally about what your positions have involved?

12 A. Yes. I've always been an underwriter for the specialty  
13 lines of coverage. Throughout my career or throughout the  
14 years, I've had roles with increased responsibilities,  
15 including larger books of business, larger agent  
16 relationships, and then also managing larger teams that  
17 reported to me that culminate in 2017 with my current role  
18 of managing the underwriting services branch in  
19 Connecticut.

20 Q. Can you tell us a bit more about what your current role  
21 involves?

22 A. Yes. The underwriting services branch, I manage over  
23 100 underwriters in our specialty lines of coverage,  
24 focused primarily on the not-for-profit, as well as cyber  
25 and E&O or professional liability.

Q. And what -- describe for us what sort of the business of the branch is.

A. Sure. On the renewal side, my renewal teams, the private not-for-profit group is my largest group of underwriters. And the way that business comes in to our branch is, it's written by any of our field offices in the United States; and if it's under 35,000 in premium, it is eligible for transfer into my group in Connecticut to be serviced on the next renewal.

Q. Does your branch also process new business?

A. Yes, we do. I have two different teams that work on new business submissions that agents send us directly or some of our branches can send to us directly to work on as well.

Q. Are you familiar with the Automated Renewal Process application?

A. Yes, I am. My team is responsible for the renewals that go through the Automated Renewal Process process.

Q. So the branch you manage, that branch is the branch that uses Automated Renewal Processing?

A. Correct.

Q. Okay. And can we refer to it as ARP?

A. Yes.

Q. Okay. What does ARP do?

A. ARP at a high level buckets and really qualifies

1 whether a renewal needs a renewal -- a submission for the  
2 next renewal cycle or it doesn't, and it can be renewed  
3 without any additional information.

4 Q. Do business people at Chubb or underwriters ever change  
5 the rules in ARP?

6 A. No.

7 Q. And based on your experience with ARP, are the rules in  
8 ARP changed frequently?

9 A. No, not frequently at all. I can't recall since I took  
10 over this position in 2017 of a rule change.

11 Q. Does the auto renewal process drive more policies to  
12 Chubb?

13 A. No. The policies are already at Chubb, and then they  
14 don't.

15 Q. So it's just -- the policy has already been sold, and  
16 this is just the renewal process?

17 A. Correct.

18 Q. Does auto renewal impact the number of policies that  
19 are actually renewed?

20 A. No.

21 Q. Why do you say that?

22 A. It just depends if we were going to get a submission or  
23 not on that renewal.

24 Q. Does auto renewal or ARP drive more business to Chubb,  
25 in your view?

1 A. No, not in my view.

2 Q. Why do you say that?

3 A. It's actually transparent to the agent. It's after we  
4 already have sold the policy, and it's just during the  
5 renewal cycle.

6 Q. So the agent or broker -- it's not something the agent  
7 or broker has visibility to when they're selling the  
8 policy?

9 A. Correct.

10 Q. Are policies that are marked for auto renewal ever  
11 taken out of that process?

12 A. Yes. My management team does review on a monthly basis  
13 those -- the total account list that is qualified for  
14 automatic renewal, and we can choose to pull accounts out  
15 if we require full -- more underwriting review.

16 Q. Are policies auto renewed indefinitely, or is there  
17 only a certain amount of time for which they would be  
18 automatically renewed?

19 A. No. There is a, there is a rule in place that it can  
20 only automatically renew for three years, and then it will  
21 pop out to become a -- require a renewal underwriting  
22 submission, and the underwriter would review the whole  
23 account again.

24 Q. You mentioned this a little bit when you were  
25 describing your branch, but to be clear, are all Chubb



1 policies eligible to go through the auto renewal process?

2 A. No. Only certain products that have the capability or  
3 in the private not-for-profit customer group.

4 Q. Before this lawsuit, were you aware of Blaze software?

5 A. No.

6 Q. To your knowledge, had you ever heard of Blaze  
7 software?

8 A. No.

9 Q. Have you now through your involvement in the lawsuit  
10 come to understand that Blaze was used in ARP?

11 A. Yes, through this lawsuit.

12 Q. Again, have you learned that Blaze has since been  
13 removed from ARP?

14 A. Yes.

15 Q. And did you notice any change whatsoever in the  
16 functioning of ARP when Blaze was removed?

17 A. No.

18 Q. That's the main business -- or that's a good portion of  
19 the business that your branch does, right, is working with  
20 ARP in some way?

21 A. Correct.

22 Q. So if there had been a change in that system with the  
23 removal of Blaze, you would know about it, right?

24 A. Yes.

25 Q. Let's talk about DecisionPoint. Are you familiar with

1 that application?

2 A. I am.

3 Q. And how are you familiar with it?

4 A. My team, my new business team, is responsible for the  
5 referrals that are generated from the DecisionPoint system.

6 Q. So is it fair to say that anything that's submitted to  
7 Chubb through DecisionPoint and goes to a referral goes to  
8 your team?

9 A. That is correct.

10 Q. Okay. In your view, does DecisionPoint reduce the  
11 amount of work that underwriters at Chubb need to do?

12 A. No. The referrals that come from the DecisionPoint  
13 system in many cases creates more work for my team because  
14 they don't have -- they need to go back to the agent for a  
15 lot of the information to proceed with quoting the business  
16 or not.

17 Q. And why? Why is that, based on your experience?

18 A. Based on my experience, we don't always have a full  
19 view of the underwriter to see what has been inputted into  
20 the system, so we have to ask for basically the renewal  
21 submission or financial information, and many times the  
22 agent doesn't fully complete all of the inputs anyways, so  
23 we would have to ask those questions to make an informed  
24 decision whether we would like to put forth a quote or not.

25 Q. Do you have a view of how DecisionPoint has been

1 accepted or adopted by agents and brokers, generally?

2 A. Yes. It's had a pretty low adoption rate. Some of the  
3 challenges for agents is it takes quite a bit of their  
4 time. There are a lot of inputs and key strokes and data  
5 points that the agent has to put in the system in order to  
6 try to get a quote, and many times they can get frustrated  
7 if they input all that information and then it just gets  
8 referred.

9 But then the other additional challenge that  
10 agents -- that we found, is that agents just don't go to  
11 one carrier or insurance carrier for a proposal; they would  
12 send an e-mail anyways to multiple carriers to try to get  
13 options for the insured. So they would have to go to the  
14 DecisionPoint system, potentially get a quote, and then  
15 still have to do the same work to send it out to other  
16 carriers. It's much easier for them just to include Chubb  
17 on that e-mail address and not have to input any key  
18 strokes in DecisionPoint.

19 Q. Similar questions about Blaze. I take it you did not  
20 know before the lawsuit that Blaze was used in  
21 DecisionPoint?

22 A. Correct. No.

23 Q. Did you as the manager of the branch that handles all  
24 of the referrals from DecisionPoint, did you notice any  
25 change in functioning of DecisionPoint when Blaze was

1 removed from that application?

2 A. No.

3 Q. Are you aware of the CSI Express application?

4 A. Yes, I am. I began using CSI Express when I started at  
5 Executive Risk in 1998.

6 Q. So CSI Express was actually at Executive Risk?

7 A. Yes.

8 Q. And then how did it come to be at Chubb?

9 A. Once Chubb acquired Executive Risk, that was, that was  
10 part of the acquisition, the technology that was acquired.

11 Q. And then have you used CSI Express then pretty  
12 consistently throughout your time at Chubb?

13 A. Yes, I have.

14 Q. What does CSI Express do, just in general terms?

15 A. It's a, it's a -- CSI Express is a policy  
16 administration system. It takes the account from  
17 submission entry all the way through the binding and the  
18 issuing process. An underwriter can go in there for -- to  
19 price and document and read their accounts. They use it on  
20 their accounts.

21 Q. Does CSI Express automate the underwriting process?

22 A. No.

23 Q. Why do you say that?

24 A. The underwriter is responsible for all the  
25 discretionary and the investigation and reviewing the

1 documents and coming up with pricing. There is a lot of  
2 discretionary decisions that go into the process. And then  
3 we just use CSI Express to put the quote out.

4 Q. Prior to this lawsuit, did you know that Blaze had been  
5 incorporated in some ways into CSI Express?

6 A. No.

7 Q. In particular through ARP or --

8 A. No.

9 Q. Have you now come to learn that Blaze was removed from  
10 CSI Express as it was from the other applications we've  
11 discussed?

12 A. Yes, through this trial.

13 Q. And have you noticed any difference in the  
14 functionality of CSI Express since Blaze was removed?

15 A. No, I have not.

16 Q. Any decrease in performance at all?

17 A. No.

18 Q. Are you familiar with the Profitability Indicator  
19 application?

20 A. Yes, I am.

21 Q. And have you come to learn that Blaze was removed from  
22 that application?

23 A. Through this trial, yes.

24 Q. Did you notice any changes in the performance of that  
25 application when Blaze was removed?

1 A. No.

2 Q. Same question for the CUW-IM application. Are you  
3 familiar with that?

4 A. I'm familiar CUW.

5 Q. And did you come to understand that Blaze was removed  
6 from that application?

7 A. Through this process, yes.

8 Q. Have you noticed any changes in the performance of the  
9 application?

10 A. No.

11 Q. Is it fair to say that the removal of Blaze from these  
12 systems has not impacted your business in any way?

13 MR. DUBIS: Objection. Foundation.

14 THE COURT: Overruled.

15 THE WITNESS: I have not noticed it, no.

16 BY MS. JANUS:

17 Q. From your 24 years in underwriting at Chubb, have you  
18 come to have an understanding of what drives Chubb's  
19 revenues and profits?

20 A. Yes. Through the various roles I've had with  
21 progressed responsibility, I feel very comfortable with how  
22 Chubb derives revenue and profit.

23 Q. I just put a slide up on the screen. Have you seen  
24 this before?

25 A. Yes, I have.

Q. What is this?

A. This is a graphical representation of all of the really pillars or keys to how Chubb generates revenue and profit.

Q. And based on your experience at Chubb, what of these factors here would resonate with you?

A. As an underwriter, definitely the boxes that resonate and stick out to me is reputation is number one. That's a key to our success, and it's really our longevity in the industry. We have an excellent reputation. We've been around since 1882. We have a stellar financial strength that allows us to pay our claims and our claims paying ability and wanting to pay our claims is a specific strength and reason for revenue and profit.

Q. Do you think that faster underwriting is a driver of revenue and profit?

A. No. If you go too fast when you're underwriting, you can miss things and put together, you know, a poor proposal that could lead to losses on accounts or not a profitable account. It's also important to have a very quality proposal that is tailored towards the different needs of each of the businesses that we look at and specifically endorsed in a way to cover those exposures.

Q. In your experience, are faster quotes a revenue or profit driver?

A. No. Agents wait for many proposals for what they've

1 sent out to insurance carriers to provide options to our,  
2 to potential insureds. So just quoting an account fast  
3 does not mean that's going to turn into a binder. And many  
4 of our -- it has to be a bit -- the proposal has to be  
5 comprehensive and a quality proposal, as well as our  
6 specialty lines of coverage are discretionary purchases.  
7 So the insureds don't have to buy our coverages at all. So  
8 a fast quote doesn't mean that they will ever even buy the  
9 account ever.

10 Q. You mentioned the judgment that goes into underwriting  
11 in specialty lines. Is that subjectivity and human  
12 judgment important in your view in the underwriting process  
13 for specialty lines?

14 A. Absolutely. Underwriting is complex for specialty  
15 lines of coverage. And it is important to, you know, make  
16 good and quality decisions on the information that you  
17 have, and there is discretion of the underwriter through  
18 their tenure in the business and their, their exposures to  
19 a lot of different accounts that they draw upon in order to  
20 put forth a quality proposal for that piece of business  
21 that they're looking at.

22 MS. JANUS: Thank you, Ms. Theberge. Those are  
23 all the questions I have for you.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you, Ms. Janus.



1           Members of the Jury, we will take our morning  
2 recess. Plan to be back in the courtroom at 11 o'clock.

3           THE CLERK: All rise for the jury.

4                   **(Jury exits.)**

5  
6                   **(In open court without the Jury present.)**

7           THE COURT: Ms. Theberge, you can step down, if  
8 you want.

9           THE WITNESS: Thank you.

10          THE COURT: Anything to chat about?

11          MS. JANUS: I don't think so.

12          THE COURT: Okay. See you at eleven.

13                   **(Recess taken.)**

14  
15                   **(In open court without the Jury present.)**

16          THE COURT: Be seated.

17          THE CLERK: All rise for the jury.

18                   **(Jury enters.)**

19  
20                   **(In open court with the Jury present.)**

21          THE COURT: Be seated. The floor is yours,  
22 Mr. Dubis.

23          MR. DUBIS: Thank you, Your Honor.  
24  
25

**CROSS EXAMINATION**

BY MR. DUBIS:

Q. Good morning, Ms. Theberge. It's nice to meet you in person.

As you recall, my name is Joe Dubis, and I'm an attorney representing FICO. And we met at your remote deposition on April 29, 2020, during the heart of lockdown; is that right?

A. Yes. Correct. Nice to see you.

Q. Nice to meet you.

And I have given you a binder in front of you there, and it has a transcript of that deposition and some exhibits we may walk through.

So I just wanted to start out, you testified that you have been in the specialty lines of business for your career, correct?

A. Correct.

Q. And so you have no positions in the commercial lines?

A. Correct.

Q. And no positions in the personal lines, correct?

A. Correct.

Q. And you testified that you don't know about the technologies of the applications that were discussed, correct?

A. That is correct.

Q. Okay. So then I want to turn to your discussion about renewals. So you testified that renewals are already at Chubb, correct?

A. Correct.

Q. But you would agree that if Chubb did not renew any of those policies, that would be bad for business, correct?

A. Yes, we look to retain as many renewals as we can.

Q. And if Chubb could not auto renew those policies, then humans would have to touch every single renewal, correct?

A. Correct.

Q. And you would agree that Chubb has more renewals than new applications on a given year, correct?

A. I actually don't know.

Q. You don't? Okay. That's fine.

And so you testified that auto renewals does not drive Chubb's business, correct?

A. Correct.

Q. And did you provide any documents that say that?

A. Not to my knowledge.

Q. Okay. And any analysis that says that auto renewals does not drive Chubb's business?

A. Not to my knowledge, no.

Q. And you testified regarding your use of CSI Express dating back to about 1998, correct?

A. Yes.

1 Q. And do you have any knowledge that Chubb & Son licensed  
2 Blaze Advisor in 2006 to automate renewals within CSI  
3 Express?

4 A. I do not know that.

5 Q. So I want to turn a little bit to talk about brokers  
6 and agent relationships. Would you agree that insurance is  
7 a relationship-driven business?

8 A. Yes, it is.

9 Q. And so forming relationships with agents and brokers is  
10 important to ensure that those agents and brokers are  
11 selling Chubb Insurance, correct?

12 A. Yes, and understand the need for our products, yes.

13 Q. Mr. Mayleben, could we put up the pillars  
14 demonstrative?

15 Ms. Theberge, if you open to the first page in  
16 your binder, I believe that should be your graphic. Okay.  
17 And you have it there in front of you, correct?

18 A. Yes.

19 Q. Okay. Now, you spoke about the importance of  
20 reputation, correct?

21 A. Yes, I did.

22 Q. And -- but did you provide any documents today that say  
23 what percent of Chubb's revenue and profits are driven by  
24 reputation?

25 A. No, I don't have anything for that.

1 Q. Okay. And you work in the underwriting department,  
2 correct?

3 A. Yes.

4 Q. And so I see underwriting as the bottom aspect of  
5 sales, correct?

6 A. Yes.

7 Q. And you contributed to the creation of this document,  
8 correct?

9 A. I reviewed it, yes.

10 Q. You reviewed it. Okay. I don't see technology on this  
11 pillars document anywhere. Do you?

12 A. No, I don't.

13 Q. Okay. Now, in your manager -- sorry. In your  
14 underwriting services branch manager position, you are  
15 responsible for work flow, correct?

16 A. Yes.

17 Q. Okay. And as part of that work flow, certain renewal  
18 policies were sent to the underwriting services branch for  
19 processing, correct?

20 A. Yes. If they meet certain criteria, they transfer.

21 Q. And when you say, "Certain criteria," primarily it's  
22 the premium threshold, correct?

23 A. Correct.

24 Q. And so you're transferring these lower premium  
25 policies. And that is done to free up the field

underwriter's time to get more business, correct?

A. Correct.

Q. And if those lower premium policies were not transferred, the field underwriters would have to work on those policies themselves, correct?

A. Yes.

Q. And so, again, we've already talked about CSI Express, and I just want to clarify it. So when you were an underwriter, different than being the manager of --

A. Mm-hmm (Yes).

Q. -- when you were an underwriter, you used CSI Express if the specific product was housed within CSI Express, correct?

A. That is correct.

Q. And so then let's turn to the automated renewal process application. Would you agree with me that when we're talking about renewals, there are high-touch renewals and low-touch renewals, correct?

A. Yes.

Q. And would you agree with me that there are no touch renewals?

A. Yes.

Q. Okay. And so when we're talking about the Automated Renewal Process, we're really focusing on those no-touch renewals, correct?

1 A. Correct.

2 Q. So we're not talking about high-touch renewals,  
3 correct?

4 A. Correct.

5 Q. Okay. And so if the policies are of that type, a  
6 no-touch, they're renewed without having to be manually  
7 reviewed, correct?

8 A. We do manually review them after -- once they're --  
9 after they're scored on a monthly basis.

10 Q. But there are policies renewed without ever being  
11 manually reviewed in any context, correct?

12 A. Yes. Correct.

13 Q. Okay. And when that happens, the Automated Renewal  
14 Process books, binds and issues the policy, correct?

15 A. Yes.

16 Q. And you testified about your knowledge of Profitability  
17 Indicator, correct?

18 A. Correct.

19 Q. And so would you agree Profitability Indicator is a  
20 tool that underwriters use for pricing guidance?

21 A. Yes, one of the various tools we use.

22 Q. And then let's turn to DecisionPoint. Now, you  
23 testified that DecisionPoint created more work for the  
24 agents and brokers, but did you have any documents to show  
25 that?

1 A. I do not.

2 Q. Okay. So we didn't talk about any documents that show  
3 that agents and brokers were unsatisfied with  
4 DecisionPoint, correct?

5 A. No documents, no.

6 Q. And my question is, If DecisionPoint was so troublesome  
7 for Chubb and disliked by agents and brokers, why was it  
8 not phased out in the ten years that it was available?

9 A. There was still some use in it. Some agents did use  
10 it, for sure. That's why it was not discontinued.

11 Q. Okay. So some agents used it, but -- okay.

12 And you said your team was responsible for much  
13 of the DecisionPoint business, if there was a referral,  
14 correct?

15 A. Correct.

16 Q. But if the quote was automatically generated, that  
17 wouldn't come to your, your team, correct?

18 A. Unless the agent had questions or wanted additional  
19 options on that quote, then they would -- those requests  
20 would come to my team to handle.

21 Q. Okay. And you would agree that the goal of an  
22 underwriter is to make smart decisions, correct?

23 A. Correct.

24 Q. And that an underwriter's performance is important to  
25 the profitability of the insurance company?



1 A. Yes.

2 Q. And you would agree with me that there is competition  
3 to sell insurance, correct?

4 A. Yes.

5 Q. Okay. And you testified that speed was not important,  
6 correct?

7 A. Correct.

8 Q. Okay. Now, if an underwriter moves too slowly, it's  
9 possible to lose a business opportunity, correct?

10 A. Yes, we could.

11 Q. And you personally have lost a business opportunity  
12 because your underwriting was not done fast enough,  
13 correct?

14 A. Correct, because I asked for additional information.

15 MR. DUBIS: Okay. I have no further questions.  
16 Thank you.

17 THE COURT: Thank you, Mr. Dubis.

18 Ms. Janus?

19 MS. JANUS: Nothing further, Your Honor.

20 THE COURT: All right. Very well. Thank you,  
21 Ms. Theberge. You may step down.

22 **(Witness excused.)**

23 THE COURT: Ms. Godesky?

24 MS. GODESKY: Your Honor, defendants' next  
25 witness is by video, and it's Oliver Clark, who is a former

1 FICO employee.

2 Mr. Clark was employed by FICO from 2011 to 2022.  
3 Mr. Clark was deposed on September 11th, 2018, when he held  
4 the position of director in the pre-sales consulting  
5 division at FICO, working on the decision management suite  
6 line of business at FICO. And when Mr. Clark worked for  
7 FICO, he lived in London, England.

8 (OLIVER CLARK)

9 DIRECT EXAMINATION

10 BY MS. JANUS:

11 Q. What is your position at FICO?

12 A. I am a director in the pre-sales consulting division,  
13 working within a line of business responsible for one of  
14 the three lines of business that FICO provides.

15 Q. Director in the pre-sales consulting division? Is that  
16 correct?

17 A. Yes --

18 Q. Okay.

19 A. -- of one of the lines of business.

20 Q. One of the lines of business, and which line of  
21 business?

22 A. This is the decision management suite line of business.

23 Q. What -- how long have you been a director in the  
24 pre-sales consulting division?

25 A. I cannot recall when I was promoted to that role, to

1       that title. Sorry. The role I've had for longer, so I  
2       cannot recall the exact date of the promotion.

3       Q. How long have you been in this role?

4       A. Since 2014 I've been managing a team of consultants.

5       Q. 2014 to the present?

6       A. Yes.

7       Q. Okay. And how long have you been at FICO?

8       A. Since 2011.

9       Q. What positions did you hold prior to your current  
10      position?

11      A. I joined as a senior consultant and became manager in  
12      2014 and then promoted to director in -- I believe it was  
13      2015.

14      Q. So the next time that you encountered Chubb during your  
15      time at FICO was in 2013, correct?

16      A. That is, I believe, the next time, yes.

17      Q. Okay. And you said that you recall, there was an  
18      inbound inquiry from Chubb in Europe; is that correct?

19      A. So I said that there was an inquiry that came into --  
20      somehow, I don't recall, came into the client partner.

21      Q. Okay. And who is that?

22      A. That was Richard Hill.

23      Q. Did you find out as you were working with Chubb what,  
24      whether Chubb had a license for Blaze Advisor?

25      A. The customer said -- our contact at Chubb said early on

1 in an e-mail that they had a global license for Blaze  
2 Advisor and that they were in contact with with the team in  
3 the U. S. to manage that.

4 Q. So your contact at Chubb said that?

5 A. Yes.

6 Q. And this was in 2013?

7 A. I believe so, yes.

8 Q. Did you discuss the status of Chubb's license for Blaze  
9 Advisor with your colleagues at FICO?

10 A. I had a communication from a colleague internally that  
11 echoed what the customer had said.

12 Q. Go ahead.

13 A. So the question -- could you repeat the question,  
14 please?

15 Q. Would it be your practice to verify the status and the  
16 scope of a client's license for FICO software internally  
17 through FICO?

18 A. It would not be my responsibility to validate that.

19 Q. But would it be your practice to make sure, as you're  
20 working with a client, that either the use you're assisting  
21 with is already licensed or that a new license would be  
22 contemplated?

23 A. So my practice would be to -- I had the same  
24 information from the client and from an internal source. I  
25 had no reason to doubt that information.

Q. Okay. And here that information was that there was a global license for Blaze?

A. Yes.

Q. Who at Chubb were you working with?

A. This is Ewen Setti.

Q. Okay.

A. Initially.

Q. What did that -- what did your work with Chubb entail in the 2013 time period?

A. My work with Chubb in that time period was to handle the inquiry. As I said earlier, it was -- the intention was to understand what the customer is trying to achieve. So I gave a presentation to Ewen on the current capabilities of the software, because customers often don't themselves keep up with what's available in the latest version. So I saw that as a -- something I was willing to do just to make sure the client was aware of the current capabilities of the system.

Q. Was it your understanding at that time that Chubb in Europe was already using Blaze in certain ways?

A. That was my perception.

Q. And was that based on conversations with Mr. Setti?

A. Yes.

Q. Did you also, did you also learn that Chubb was using Blaze in Europe from your colleagues at FICO?

OLIVER CLARK BY DEPOSITION

1 A. I do not receive that information.

2 Q. It was your understanding, I take it, that the use  
3 Mr. Setti was asking you about for Chubb in Europe's  
4 application was within the scope of Chubb's license for  
5 Blaze Advisor; is that correct?

6 A. I was not acting to interpret the license, but I was,  
7 based on the information Ewen was giving me, working on the  
8 assumption that this usage was legitimate.

9 Q. What information was that?

10 A. So the -- Ewen mentioned that they were planning to use  
11 the software for a new project or were in the course of  
12 doing so, and there was an implication that they were  
13 already using it for other areas.

14 Q. And so based on the information that he was going to  
15 use the software on a new project, you assumed that it was  
16 allowed under the license?

17 A. The contact said quite clearly it was a global license  
18 and that he was in contact with his colleagues in the U. S.  
19 who maintained that.

20 Q. You said, "The contact said"? You mean Ewen said?

21 A. Ewen wrote --

22 Q. "Ewen wrote," okay.

23 A. -- that.

24 Q. Okay. But based on the information you received from  
25 your colleagues at FICO, did you understand that Chubb's

1 contemplated use of Blaze Advisor was within the scope of  
2 the license?

3 A. That is correct. Yes.

4 Q. Okay. So it wasn't an assumption that you had simply  
5 based upon comments made by Ewen Setti, correct?

6 A. Correct.

7 Q. What happened next in terms of your dealings with  
8 Chubb?

9 A. I believe from memory that there was a series of  
10 e-mails where -- again, ad hoc -- Ewen would ask a  
11 question, I would write back with a response.

12 Q. Okay. And was there another period after that when you  
13 were dealing with Chubb in Europe more regularly?

14 A. Yes. I invited Ewen to a launch event of a new product  
15 that we had in London -- I believe that was 2014 -- and  
16 Ewen invited a colleague of his, Hamish Duncan.

17 Q. What product was that?

18 A. This was the FICO decision management platform.

19 Q. Who else at FICO in Europe had contact, direct contact,  
20 with Chubb in Europe?

21 A. The account executives, Andy Moffat and Ross Smith.

22 Q. R-O-S-S?

23 A. Yes.

24 Q. Anyone else?

25 A. Also I'm aware of a colleague, Larry Jacobson, who

1 attended one of the meetings I had with Chubb.

2 Q. Okay. Did you understand that, while you were working  
3 with Chubb on an ad hoc basis, Chubb was, in fact, working  
4 with Blaze in Europe?

5 A. Yes. As previously mentioned, that was my  
6 understanding.

7 Q. And you had dealt with Mr. Sawyer on previously  
8 occasions, correct?

9 A. I had e-mailed him and spoken once, but I did not know  
10 him.

11 Q. But you were involved in, you were involved in  
12 discussions about Chubb's use of Blaze Advisor in Europe  
13 with FICO employees in the United States?

14 A. Yes. Yes.

15 Q. Who were you involved in those conversations with?

16 A. So at the time a gentleman called Russ Schreiber was  
17 the global practice lead for insurance at FICO.

18 Q. What were your dealings with Mr. Schreiber?

19 A. Again, similar to Mr. Sawyer. Ad hoc inquiries and  
20 communications over e-mail. Nothing verbal.

21 Q. Okay. And those communications would have related to  
22 Chubb's use of the Blaze Advisor software in Europe?

23 A. The e-mail communications related to discussions that  
24 were being had with Chubb in Europe.

25 Q. And Chubb's use of Blaze Advisor in Europe?



1 A. They were related to Chubb's use of Blaze Advisor in  
2 Europe.

3 Q. Okay. Showing you what has been marked as Exhibit 47,  
4 this is a series of e-mails that begin on the second page  
5 of the document. The first one is dated August 14th, 2012,  
6 which is one day after the e-mail that we just reviewed in  
7 Exhibit 46, correct?

8 We're waiting for you to review the document.

9 Have you done so?

10 A. I've read the document, yes.

11 Q. And that e-mail is from Richard Hill to Russ Schreiber,  
12 dated August 14th, 2012, correct?

13 A. Correct.

14 Q. That is one day after the e-mail that we reviewed dated  
15 August 13th, 2012, in which Chubb reached out to FICO about  
16 using Blaze in Europe, correct?

17 A. Yes, it's the day after.

18 Q. Okay. Looking at Exhibit 47, the first e-mail in the  
19 chain is from Mr. Hill to Mr. Schreiber. Mr. Hill writes,  
20 "Chubb UK have started being interested in Blaze (again),  
21 and I'll try and speak with the new contact who apparent  
22 wants to do a POC for underwriting," correct?

23 Please answer my question.

24 A. That is what the document says.

25 Q. Okay. And POC is proof of concept?

1 A. I would assume so in this case, yes. Yes.

2 Q. Okay. Mr. Hill goes on to say, "Let me know if  
3 anything has changes" -- I assume he means changed -- "good  
4 or bad, and more importantly whether we can actually sell  
5 anything new here as I seem to remember their U. S. Blaze  
6 license allowed them to use the software for free."

7 Do you see that?

8 A. That is what the document says.

9 Q. So Mr. Hill here is asking Mr. Schreiber whether there  
10 is anything FICO in Europe can actually sell to FICO -- to  
11 Chubb in Europe, correct?

12 A. He appears to be asking what can be sold in terms of  
13 new licenses.

14 Q. Okay. And it looks like his recollection was that the  
15 U. S. Blaze license allowed Chubb Europe the software for  
16 free, correct?

17 A. I cannot comment beyond anything that's written here by  
18 Richard Hill.

19 Q. Showing you what has been marked as Exhibit 48, I'm  
20 going to ask you some questions about this chain of  
21 e-mails. Take a moment to review, and please let me know  
22 you've finished reviewing it.

23 A. Okay. Okay. I've reviewed the document.

24 Q. At the bottom of the first page of Exhibit 48, there is  
25 an e-mail from Ewen Setti to Richard Hill, dated August 28,

OLIVER CLARK BY DEPOSITION

1 2013, correct?

2 A. Correct.

3 Q. And he states that he got Mr. Hill's e-mail address  
4 from Matthew Male and Mark Wilson "in our personal lines IT  
5 team." Do you see that?

6 A. That is what the document says.

7 Q. And to refresh your recollection, when we were looking  
8 at Exhibit 46, which is the first e-mail you looked at, it  
9 was Mark Wilson at Chubb who was corresponding with FICO  
10 about the personal lines, correct? I direct you to --

11 A. Yes, it was Mark Wilson --

12 Q. Okay.

13 A. -- who was communicating Exhibit 46.

14 Q. Okay. So we carry that through, then. It looks like  
15 Mark Wilson gave Mr. Setti Mr. Hill's contact information,  
16 according to this e-mail, correct?

17 A. That appears to be the case.

18 Q. Mr. Setti identifies that he works for the commercial  
19 license IT team at Chubb in London and that they're  
20 embarking on their first rules project, "which involves  
21 migrating some low-touch/no-touch renewal rules from their  
22 current Oracle-stored procedure implementation over to  
23 Blaze Advisor. Do you see that?

24 A. That's what it says, yes.

25 Q. So Mr. Setti is writing an e-mail to FICO explaining

1 that Chubb in Europe is expanding its use of the Blaze  
2 software, correct?

3 A. So it says here that his team, or he, we, are embarking  
4 on their first rules project.

5 Q. Okay. So they're contemplating using Blaze in a way  
6 that they hadn't used Blaze before, correct?

7 A. I would say it's open to interpretation as to what  
8 "embarking on their first project" means. It doesn't  
9 necessarily exclude any other existing usage.

10 Q. He's writing an e-mail -- Chubb Europe is writing an  
11 e-mail to FICO, talking about wanting to use Blaze in Chubb  
12 Europe in a way that they're not currently using it or  
13 expanding it to another use. Is that fair?

14 A. Yes. Ewen Setti appears to be communicating that he's  
15 embarking on a new project.

16 Q. Then Mr. Hill forwards the e-mail to you on October 28,  
17 2013, correct?

18 A. On August, 28th of August.

19 Q. Thank you.

20 A. 2013.

21 Q. Thank you. And he says, "Hi, Olly. Do you fancy  
22 playing with these guys, too?"

23 I take it he's sort of saying, Do you want to  
24 work with Chubb Europe? "To set expectations, they already  
25 have a Blaze global ELA (thanks Russ Schreiber) so the best

1 we will get is some PS, although they do have their own IT  
2 team, I doubt they know what they are doing."

3 Do you see that?

4 A. That is what's written in the document.

5 Q. So what do you take that to mean, "To set  
6 expectations"? How did you interpret that?

7 A. I think his sentence explains itself in that he  
8 explains that the upside is likely to be limited to  
9 professional services.

10 Q. The upside in terms of revenue generation?

11 A. Near term revenue. Revenue.

12 Q. Do you think that the -- did you interpret the point of  
13 his statement to be, Unfortunately, they already have a  
14 Blaze global ELA and that's due to Russ Schreiber?

15 A. Yes. Russ's role was as global insurance practice  
16 lead, so Richard was setting expectations, as he says here,  
17 around what this could possibly lead to.

18 Q. And then he says, "PS -- oh, I'm sorry. Some PS. Is  
19 that professional services?

20 A. Yes, that's professional services.

21 Q. And just describe in general terms what "professional  
22 services" means in that context?

23 A. Professional services can be, used to deploy our  
24 software, but also to do things like conduct current state  
25 assessments and perform business analysis as a precursor to

1 any project.

2 Q. Does this refresh your recollection that your -- the  
3 first time you received information about the scope of the  
4 Blaze license that Chubb had was actually from Mr. Hill at  
5 FICO?

6 A. Yes. That would -- sorry. You asked the scope of the  
7 license. Yes. So it appears to be the case. He's  
8 indicating a global ELA is in place.

9 Q. And you had not had any contact directly with Chubb in  
10 Europe prior to Mr. Hill's August 28th, 2013, e-mail; is  
11 that correct?

12 A. Not that I recall.

13 Q. Did you in fact begin engaging with Chubb in Europe  
14 after receiving this e-mail from Mr. Hill, to the best of  
15 your recollection?

16 A. That is my recollection, yes. That's when I started to  
17 meet with the clients face-to-face in the office.

18 Q. Showing you what's been marked as Exhibit 49.

19 A. Mm-hmm (Yes).

20 Q. This is a calendar entry for a meeting.

21 A. Yes.

22 Q. And the subject of the meeting is, "Discussion on the  
23 use of Blaze Advisor," correct?

24 A. That is correct.

25 Q. It appears to be a meeting on September 10th, 2013,

1 between you and Mr. Setti, correct?

2 A. Yes.

3 Q. I'm showing you what's been marked as Exhibit 50.

4 Please let me know when you've had a chance to review this  
5 document.

6 Have you reviewed it? Oh.

7 A. Yes, I've read the document.

8 Q. All right. The first e-mail in the chain, which is on  
9 the second to the last page of Exhibit 50, is an e-mail  
10 from you to Mr. Setti, dated October 9th, 2013 -- or I'm  
11 sorry -- September 10th, 2013, correct?

12 A. That is correct. Yes.

13 Q. Okay.

14 A. 10th of September.

15 Q. And that was the date of the meeting you had with  
16 Mr. Setti, correct?

17 A. Yes. Yes. The dates are in different formats, but  
18 yes.

19 Q. Okay. And you write an e-mail to Mr. Setti, and you  
20 refer to a deck on decision requirements analysis.

21 A. Yes.

22 Q. And I guess another slide deck as well, correct?

23 A. Yes.

24 Q. Did he discuss with you during the September 10th,  
25 2013, meeting how Chubb Europe was using Blaze Advisor at

1       that time?

2       A.   He may have.   I don't recall any details around the  
3       extent.

4       Q.   Do you, as you sit here today, do you recall having  
5       knowledge generally about how Chubb Europe was using Blaze  
6       Advisor?

7       A.   Not in any level of detail, no.

8       Q.   Do you recall what applications Chubb Europe used Blaze  
9       Advisor in?

10      A.   I believe in a -- I believe Ewen did advise me that  
11      they had an instance in accident and casualty, but that is  
12      just my recollection.

13      Q.   Do you recall the name of the application it was used  
14      in?   No?

15      A.   (Moves head in negative manner.)

16                 No, just a generic, the generic term that I just  
17      used.

18      Q.   Okay.   Then on the next page of the exhibit, which is  
19      FICO 2024, in the middle of the page you forward the e-mail  
20      from Mr. Setti to Mr. Hill, correct?

21      A.   Yes.

22      Q.   And you copy Dermot McCarthy.   Who's that?

23      A.   He was Richard's manager.   The sales director.

24      Q.   Is he at FICO still?

25      A.   He is.



Q. What's his position?

A. He is a client partner managing our processors -- relationships with processors.

Q. Okay. Then in your e-mail to Mr. Hill you say, "It seems like they have plenty of candidate projects for Blaze Advisor in the UK/Europe and they have been coached well by their colleagues in North America."

What are you referring to there?

A. So this was a comment on what must have been Ewen mentioning that he perhaps sees potential for using the technology elsewhere. And when I say, "Have been coached well by their colleagues in North America," I believe that was from a perception that he was well-connected to the U. S. team and seemed comfortable running the projects themselves, as I note in the second paragraph.

Q. And then you say, "As a result, they seem fairly self-sufficient, and Ewen doesn't think that training is needed currently, but" -- bolded and underlined -- "he sees the value of Decision Simulator, which is not currently a part of that ELA."

Do you see that?

A. I do see that, yes.

Q. So you're pointing out that there is an opportunity for FICO Europe to license another software to Chubb Europe, correct?

1 A. Yes, I'm noting to Richard that there is a potential  
2 opportunity for Decision Simulator, which is an add-on to  
3 Blaze Advisor.

4 Q. So because there was not an opportunity for licensing  
5 Blaze Advisor, it's significant to you that you see an  
6 opportunity to license an add-on to Blaze Advisor. Is that  
7 fair?

8 A. Yes, it's part of Blaze Advisor, and I wanted to make  
9 Richard aware that there was a potential opportunity.

10 Q. Okay. And you note that the Decision Simulator was not  
11 a part of their current enterprise license, correct?

12 A. That's what's written here, yes.

13 Q. That's what you wrote?

14 A. Yes.

15 Q. You say, "It seems they have had a quote for \$500,000  
16 for a global DS" -- is that Decision Simulator?

17 A. Yes.

18 Q. -- "license, which is perceived to be a little steep."

19 So Mr. Setti had or Chubb had received a quote  
20 for a global Decision Simulator license?

21 A. It appears that that was the case. I don't  
22 specifically recall the discussion, but, yes, that would be  
23 the implication of this.

24 Q. And then you say, "If there were enough projects in  
25 Europe, could we propose a license for the use of Decision

1 Simulator within the UK and Europe only," correct?

2 A. That's what I wrote, yes.

3 Q. And what was the purpose of that suggestion?

4 A. The purpose was to give Richard some idea of what he  
5 could potentially work towards as a client partner.

6 Q. Okay. And the next e-mail up Mr. Hill responds to you  
7 relating to your question about a European-only ELA for  
8 Decision Simulator. And he says, "The cost for a  
9 European-only ELA for DS would depend on two factors: How  
10 big are the two regions relative to one another, and when  
11 do they think they could contract for it."

12 Let's take the first one. "How big are the two  
13 regions relative to one another." What's your  
14 understanding of what that means?

15 A. [REDACTED]  
16 [REDACTED] so therefore any discussions around further  
17 licensing must take the relative sizes of whatever it is  
18 that's being defined into consideration.

19 Q. So when you say, [REDACTED] you mean  
20 that the entity that the license is being granted to, the

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[REDACTED]  
A. I do not have a specific definition for that.

Q. Is it your understanding that it [REDACTED]  
[REDACTED]?

A. Again, I do not have specific definition of what is  
meant by [REDACTED]

Q. And then he mentions, "When do they think they could  
contract for it?"

In the next sentence he also says, "If they can  
contract this month, we can make that 225K or less."

Do you see that?

A. That's what's written in the document, yes.

Q. What did you understand him to be referring to there?

A. So the sales team, as in the sales CBs and account  
executives have some discretion over discount, and it's,  
you know, to achieve an order within a certain time period  
that discount could be applied to make it more attractive  
to do so.

That's my understanding of his statements.

Q. I'm handing you what's been marked as Deposition  
Exhibit Number 51. Please let me know when you've had a  
clans to review the document.

A. Okay. I've read it.

Q. Okay. If you take a look at the third page of the  
document, so that's 4809-3. Do you see that?

1 A. Yes.

2 Q. And towards the top of the page, there is an e-mail  
3 from you to Ewen Setti, dated October 24th, 2013. Do you  
4 see that e-mail?

5 A. Yes, I do.

6 Q. And you say, "Hello, Ewen. It's been a while since we  
7 last spoke. How is the work on the auto renewals project  
8 going?"

9 Do you see that?

10 A. I do.

11 Q. What was the purpose for you writing that e-mail to  
12 Mr. Setti?

13 A. Yeah. So I mentioned earlier that it's in our  
14 interests to have happy customers who are potentially  
15 referenceable. One of the things I wanted to do with Chubb  
16 was to have them perhaps reach that state of  
17 referenceability. So this was part of my objective of just  
18 making sure I was available to them for any --

19 Yeah. Just in terms of building up a  
20 relationship with the customer.

21 Q. Okay. And the auto renewals project that you referred  
22 to, was that a project that involved Chubb Europe using  
23 Blaze Advisor?

24 A. I believe this is the same project that Ewen had  
25 originally reached out about.

1 Q. But you understood that it involved Chubb Europe's use  
2 of Blaze Advisor?

3 A. Yes. I understood that it related to Ewen's team's use  
4 of Blaze Advisor, but I wasn't -- I hadn't crystallized in  
5 my mind which legal entity of the customer this would be,  
6 this was.

7 Q. Were you familiar with the legal entities, with Chubb's  
8 legal entities?

9 A. No.

10 Q. Well, presumably you do not want to assist with an  
11 entity's use of FICO's software if that use is unlicensed,  
12 correct?

13 A. I would not.

14 Q. Okay. And so did you view it as your responsibility to  
15 only assist with the licensed use of FICO's software?

16 A. Yes, it was -- it is not in my interests to -- for that  
17 not to be the case.

18 Q. And in then ensuring that the use you are assisting  
19 with is in fact licensed, I take it it would be information  
20 from your colleagues at FICO about the scope of the license  
21 that you would view to be authoritative on that issue?

22 A. So I had received this information from multiple  
23 places. I did not weight the pieces of information to say  
24 that one is more important than another.

25 Q. Is it your practice to take direction from your clients

1       about what they believe the scope of a given FICO software  
2       license is?

3       A.   I would like to see the situation confirmed from  
4       multiple sources.

5       Q.   Confirmed from FICO, from your FICO colleagues?

6       A.   No.   No.   Confirmed from -- by the client in this case  
7       and also from internally within FICO as well.

8       Q.   Okay.   In fact, with respect to the Chubb relationship  
9       you looked to, and FICO Europe, looked to FICO in the  
10      United States for guidance about the scope of the Chubb  
11      license.   Is that fair?

12      A.   So that was what we observed, I think, in the previous  
13      exhibit where Richard Hill reached out to colleagues in the  
14      U. S., and my assumption is that he took that action  
15      because that's where the contracts were put together.

16      Q.   Take a look at the exchange then in Exhibit 51 after  
17      the e-mail that we looked at on October 24th, 2013, in  
18      which you asked how the auto renewals project was going.

19                 Mr. Setti on October 24th then writes you an  
20      e-mail that is lengthy and appears to be asking technical  
21      questions about his project.   Is that a fair  
22      characterization?

23      A.   I would categorize this as a how-to, so how to use the  
24      software to do a certain thing.

25      Q.   Okay.

1 A. The answers to many of which similar inquiries are  
2 available in the documentation for the software.

3 Q. So he's asking you how to do something with the Blaze  
4 software?

5 A. Yes. He's -- the question relates to, yes, how to  
6 input decision logic in a certain way into the software.

7 Q. And then on the same day, October 24th, you responded  
8 to Mr. Setti relating to his question, right?

9 A. Yes.

10 Q. And you tried to answer it as best you could?

11 A. Yes.

12 Q. Okay. And then above, he states that he managed to  
13 resolve it, correct?

14 A. That's correct.

15 Q. And it was your understanding that the use of Blaze  
16 Advisor that Mr. Setti was working on was, in fact, a  
17 licensed use; is that correct?

18 A. Yes.

19 Q. I'm handing you what's been marked as Exhibit 52.  
20 Please let me know when you've had a chance to review this  
21 document.

22 A. Okay. I've read the document.

23 Q. Okay. Just tell me in general terms, what does this  
24 e-mail discussion relate to?

25 A. I was preparing for a workshop with my team and several



1 colleagues from the U. S., and I wanted to have a visual  
2 way of representing where our customers are. So my inquiry  
3 was to the product manager, Jeremy Chen, to ask if we had  
4 more granular detail so that I could more quickly put  
5 together something to use in our internal sales enablement  
6 session.

7 Q. And when you say, "Our customers," was that FICO's  
8 customers of a particular software?

9 A. I mean, I was interested in everything, obviously, to  
10 help my colleagues in other divisions, but specifically  
11 this was around Blaze Advisor.

12 Q. Okay. And the first e-mail -- or, I'm sorry -- the  
13 last e-mail, the top e-mail on the first page of the  
14 document, so I'm looking at the October -- or February  
15 27th, 2015, e-mail on the top of the first page.

16 In the third paragraph you've said, "I'm not sure  
17 that the multi-national/ELA situation is easy to visualize,  
18 as there will be many examples where an ELA signed in the  
19 U. S. results in extensive usage in other regions, (Chubb  
20 springs to mind)."

21 Do you see that?

22 A. I do, yes.

23 Q. So here you're referring to, again, the fact that Chubb  
24 is using Blaze Advisor in other regions pursuant to its  
25 multi-national ELA; is that correct?

1 A. I am referencing the fact that there may be customers  
2 who have deployments in multiple countries where the  
3 license agreement -- sorry -- legitimately having  
4 deployments in other countries -- where the license  
5 agreement is -- has been agreed in a specific geography.

6 Q. And you put Chubb in that category, correct?

7 A. I named Chubb as an example of that kind -- where that  
8 situation might arise.

9 Q. So you're using Chubb as an example of a situation  
10 where the license was signed in the United States, and it  
11 resulted in extensive usage in regions outside the United  
12 States, correct?

13 A. More specifically where a license agreement is signed,  
14 and then legitimately the software is used in other  
15 territories in this case.

16 Q. Okay. And but -- and so my question is, Chubb fell  
17 into that category, correct?

18 A. Based on all the information I had received, that would  
19 be the case for Chubb at the time I wrote this message.

20 Q. So your understanding was that Chubb's license for  
21 Blaze Advisor, as you put it, legitimately allowed Chubb to  
22 use Blaze Advisor extensively outside of the United States?

23 A. That was my understanding, but of course "extensively"  
24 is a highly subjective term.

25 Q. But it's your term, correct?

1 A. It's the term I used in this instance.

2 Q. Okay. Was there any limit that you knew of to Chubb's  
3 ability to use Blaze Advisor outside of the United States?

4 A. I had not reached any conclusion on the -- what those  
5 limitations might be.

6 Q. You did not know of any; is that correct?

7 A. The license -- my understanding was, it was restricted  
8 to certain modules of Blaze Advisor, certain -- Blaze  
9 Advisor comes in two editions, and I believe it was my  
10 understanding that this was restricted to one of those  
11 editions.

12 Q. Other than that, in terms of Chubb's use of Blaze  
13 Advisor outside of the United States, you knew of no  
14 limitations. Is that fair?

15 A. The information I had been given is that it was a  
16 global license, and I was unaware of any limitations  
17 relating to this.

18 Q. I'm showing you what's been marked as Exhibit 53. This  
19 is a chain of e-mails, and I am not going to ask you about  
20 the e-mails on the first page of the document.

21 You can feel free to read the whole document, but  
22 just so that you know, I'm going to ask you about the  
23 e-mails on the pages that follow.

24 Okay. And Mr. Setti's e-mail says, "We've  
25 embarked upon a project to build a new web-based front-end

1 to our legacy policy admin system. A high level  
2 requirement for the new system is for it to incorporate a  
3 number of complex insurance rating tools that currently  
4 exist as stand-alone Excel spread sheets. We're  
5 considering using Blaze Advisor for this task, but before  
6 we make a start on anything, we wanted to check its  
7 suitability for the task."

8 Do you see that?

9 A. Yes. I do see that.

10 Q. Okay. So he's coming to you to ask about a potential  
11 new use by Chubb Europe of the Blaze Advisor software,  
12 correct?

13 A. Yes. I saw this as Ewen -- two years later or a year  
14 and a half later, after the original discussion -- using me  
15 as a contact to validate that his requirements were a good  
16 fit to the technology.

17 Q. For a new use of the software?

18 A. That is right. Yes.

19 Q. Okay. And then you write back, "Hi, Ewen. Good to  
20 hear from you. I'm pretty sure we can help. I'll give you  
21 a call tomorrow just to run through a few questions,"  
22 correct?

23 A. That's what is written here, yes.

24 Q. Okay. And that was March 9th, 2015.

25 A. Yes. That's right. March, 9th of March 2015.

1 Q. Okay. On the next page, "SLong@Chubb.com," writes an  
2 e-mail to you and says, "Hi, Oliver. As agreed by Ewen,  
3 please find attached."

4 And then describes some -- a document that is  
5 attached to the e-mail, correct?

6 A. That's correct. Yes.

7 Q. And did this follow the conversation, then, that you  
8 had with Ewen about the proposed use of Blaze Advisor in  
9 this new application?

10 A. I believe this is a direct follow-on from that  
11 conversation.

12 Q. Okay. And to the best of your recollection, what is  
13 the purpose, then, of the document that was attached to  
14 this e-mail?

15 A. To the best of my memory, the intention was to give  
16 reassurance to Ewen that this was indeed a good fit to what  
17 the software is capable of doing, because in many cases  
18 there are some -- the client might say, we're thinking of  
19 doing this, and actually it's not a good fit.

20 But he wanted reassurance, and it was indeed a  
21 good fit, so I agreed to look at the requirements.

22 Q. Great. Keep that document in front of you.

23 I'm showing you what's been marked as Exhibit 54,  
24 and tell me when you've had a chance to review it.

25 A. I've reviewed the document.

1 Q. Okay. So as we saw in Exhibit 53, Chubb Europe sent  
2 you an e-mail and a document on March 10th, 2015, outlining  
3 some proposed uses for Blaze Advisor, correct?

4 A. That's right. Yes.

5 Q. And in response to that e-mail or as a result of that  
6 e-mail, it looks like on March 11th, so the next morning,  
7 you e-mailed Jamie Chaban.

8 Who is Jamie Chaban?

9 A. At the time he was leading the pre-sales consultant  
10 team in the U. S., I believe.

11 Q. Okay. And you say, "Hi, Jamie. I believe you know  
12 Chubb well. Are they using Blaze Advisor as a ratings  
13 engine, do you know?"

14 Do you see that?

15 A. Yes.

16 Q. And what does "ratings engine" mean for someone who's  
17 not familiar with the industry?

18 A. The ratings engine is something which looks at all the  
19 risks and then assigns a rating to those risks, and then  
20 that's used to calculate a premium, perhaps, on a policy,  
21 an insurance policy.

22 Q. Okay. And Jamie gets back to you and says, "My  
23 recollection is that they use another solution for rating,  
24 but I have been out of Chubb for a long time."

25 And then he refers you to Mike Sawyer, correct?

OLIVER CLARK BY DEPOSITION

1 A. He does. Yes.

2 Q. And then Mike Sawyer writes to you and says,  
3 "Unfortunately, no. Chubb does not use Blaze as a ratings  
4 engine. They use it for underwriting rules and models in  
5 their specialty book," correct?

6 A. That's correct. Yes.

7 Q. And then you write back to Mike and James on March 11th  
8 and state, "Hi, Mike. It looks like Chubb Europe are  
9 looking into this (use as a ratings engine). I know of no  
10 restrictions in the license that prevent them from doing  
11 so?"

12 Do you see that?

13 A. Yes.

14 Q. Okay. So you're asking for confirmation from Mike  
15 Sawyer that this proposed use of Blaze by Chubb Europe  
16 would be in fact a licensed use; is that correct?

17 A. I'm giving him the option to comment on anything that  
18 may have changed since I last received information on the  
19 matter.

20 Q. Okay. So your understanding at the time you wrote the  
21 e-mail was that this would be a licensed use by Chubb  
22 Europe, correct?

23 A. Correct.

24 Q. And you're giving him an opportunity to say, no, no,  
25 no, the license has changed. This is no longer licensed

1 for some reason. Correct?

2 A. Correct.

3 Q. Okay. And did you hear back from him in connection  
4 with this e-mail, do you recall?

5 A. I don't recall.

6 Q. Would you have to expected to hear back from him if the  
7 answer was, no, this isn't a licensed use. Stop assisting  
8 immediately?

9 A. Yes, I would have expected.

10 Q. And I take it you did not hear that?

11 A. I don't believe I had a response to that e-mail, but I  
12 can't recall.

13 Q. Okay. But you would have recalled if you had received  
14 a response like that, correct?

15 A. Yes.

16 Q. Yeah. Earlier you said you made an offhand comment as  
17 soon as you got back from lunch in responding to a question  
18 that you weren't focused on which particular entity was  
19 using Blaze in connection with one of the e-mails we looked  
20 at.

21 Do you recall saying that?

22 A. I recall saying that in retrospect that at the time I  
23 wasn't aware of what the underlying legal entities were.

24 Q. Okay. So when you were working with Chubb Europe, you  
25 were not aware of what the underlying legal entities, as



1       you put it, were of Chubb. Is that fair?

2       A. That is fair, yes.

3       Q. Did you have an understanding of how Chubb was  
4       organized as a corporation or as a group of corporations?

5       A. No. Sorry.

6       Q. I'm showing you what's been marked as Exhibit 55. This  
7       appears to be a calendar entry for a meeting. The subject  
8       of the meeting is, "Blaze Advisor for insurance rating."

9               Do you see that?

10      A. Yes, I can see that.

11      Q. The date of the meeting is March 23rd, 2015, correct?

12      A. That is correct.

13      Q. So this meeting was a follow-up to the e-mails that you  
14      and Ewen and Mr. Long exchanged relating to Chubb Europe's  
15      use of Blaze Advisor for insurance rating?

16      A. That is correct. It was a follow-on meeting.

17      Q. Okay. Did you in fact have this meeting?

18      A. I believe so. If it's the one I remember, it was held  
19      in their offices for the first time, the first time I  
20      visited them in their own offices.

21      Q. Okay. Tell me what you remember about what you  
22      discussed with Ewen. Well, first tell me who was at the  
23      meeting, other than you.

24      A. So I believe Ewen and Sam were certainly there. I  
25      cannot remember if David or Denise were the other two, the

1 optionals, I cannot remember if they were there. I believe  
2 I also invited my colleague Larry Jacobson to attend with  
3 me because he's the insurance subject matter expert.

4 Q. Okay. And what was discussed at the meeting?

5 A. I cannot precisely remember what was discussed, but I  
6 believe our objective was to convince the customer or give  
7 them evidence, perhaps, from case studies from other  
8 customers that the use of the software for rating was,  
9 again, a good fit for the technology.

10 Q. So was there, as best you can recall, discussion,  
11 additional discussion, about how Chubb Europe planned to  
12 use Blaze Advisor for insurance rating?

13 A. I cannot remember the specific details of what was  
14 discussed. As I say, I did bring my -- I believe I brought  
15 my colleague, Larry Jacobson, along. He's our subject  
16 matter expert in the insurance sector, so -- yeah.

17 Q. Two-hour long meeting; is that right?

18 A. That's what it seems to have been scheduled for on the  
19 invitation.

20 Q. Do you recall whether it was in fact a two-hour long  
21 meeting?

22 A. I cannot recall whether it overran or --

23 Q. Showing you what's been marked as --

24 THE COURT: Mr. Godesky, we're going to break  
25 there. Okay?

1 MS. GODESKY: Sure.

2 THE COURT: Members of the Jury, we're going to  
3 take our lunch break, and we will go 45 minutes today, so  
4 be back or expect to be back in the courtroom at 1:00.

5 At that time I will be able to give you, I think,  
6 a pretty concrete example or idea of what the schedule  
7 looks like for the rest of the case. Okay?

8 THE CLERK: All rise for the jury.

9 **(Jury exits.)**

10

11 **(In open court without the Jury present.)**

12 THE COURT: Anything we need to take up?

13 MR. HINDERAKER: Not for the plaintiff, Your  
14 Honor.

15 MS. GODESKY: No. Thank you.

16 THE COURT: Okay. We'll see you back at 1:00.

17 **(Lunch recess taken.)**

18

19 Afternoon Session on 3/6/2023

20 1:00 p.m.

21 **IN OPEN COURT**

22 **(JURY PRESENT)**

23 THE COURT: Be seated.

24 Go ahead, Ms. Godesky. We'll continue.

25 MS. GODESKY: Thank you.

OLIVER CLARK BY DEPOSITION

1 BY MS. JANUS:

2 Q. Showing you what's been marked Exhibit 56. Okay.

3 So here Hamish Tonkin states: Hi, Olly. Good to  
4 meet up again," correct?

5 A. Yes.

6 Q. And this is the day after your March 23rd, 2015,  
7 meeting, correct?

8 A. Yes, I believe so. Yes. That's right. Yeah.

9 Q. And then Mr. Tonkin states, "Would you please be able  
10 to chase down whether we have Decision Simulator as part of  
11 our license agreement."

12 Do you see that?

13 A. That's what he's asking.

14 Q. Then you forward the email to Mr. Tonkin to Andy Moffat  
15 with a copy to Mark Collingwood, correct?

16 A. That is correct, yes.

17 Q. And Andy Moffat is someone you mentioned earlier. He  
18 was an account executive at FICO; is that correct?

19 A. Yes. Sorry. So at the time there was a  
20 reorganization, and a number of people made specialist  
21 sellers for insurance, for example, and Andy Moffat was one  
22 of them. I'm not sure whether his actual title at the time  
23 was account executive or client partner, but his role was  
24 effectively a specialist seller for the insurance sector.

25 Q. And what about Mark Collingwood?

1 A. Mark Collingwood was his manager at the time.

2 Q. Okay. And you say, "Good afternoon, Andy. Please see  
3 below for an email from one of the global enterprise  
4 architects."

5 And then you say, "(Think Sully from the  
6 training)"?

7 A. Yes.

8 Q. What does that refer to?

9 A. We had received some sales training, and part of it was  
10 about the topic was selling to IT. So Sully was named as  
11 an archetype sort of person that you would want to build a  
12 relationship with in order to get -- you know, to follow  
13 the selling to IT sales play.

14 So I was referencing the fact that Hamish met  
15 that profile, and he was also at the training, of course.

16 Q. And he was what?

17 A. And he was at the training that I was referring to.

18 Q. Oh, I see. So you're referring to a training about how  
19 to sell to someone in IT?

20 A. Yes.

21 Q. And Sully at the training was a particular type of  
22 person or an example of someone, and you were trained about  
23 how to sell to that type of person?

24 A. We were given the example of an enterprise architect,  
25 somebody who has visibility of multiple projects and could

1 look at things holistically.

2 Q. And then you say, "Chubb having an ELA for Blaze  
3 Advisor signed in the USA, but I don't believe that it  
4 covers Decision Simulator."

5 In the second to last paragraph you say, "Could  
6 you please firstly check that they are not covered for the  
7 use of Decision Simulator (in the U.S. contract), and if  
8 this is the case, prepare a price for Hamish's  
9 consideration."

10 Do you see that?"

11 A. I do see that, yes.

12 Q. And my question was, again, you are looking for  
13 confirmation from your FICO colleagues about the scope of  
14 the Chubb license; is that correct?

15 A. My understanding was that they were not covered for  
16 Decision Simulator. So I was, again, putting this clearly  
17 in writing so that my sales colleague could then laissez  
18 with the colleagues in the US.

19 Q. To confirm that fact?

20 A. Yes.

21 Q. I'm showing you what's been marked as Exhibit 57.

22 Please take a look at this document and let me  
23 know when you've reviewed it.

24 A. Okay.

25 Q. Before I ask you about that, I'm going to ask you about

1 Exhibit 58.

2 It has some of the same emails in it, but take a  
3 look, and then let me know when you've reviewed Exhibit 58.

4 Ready?

5 A. Yes.

6 Q. Okay. Okay. So looking at Exhibit 58 on the page  
7 marked 1978, you'll see the bottom of the page is the email  
8 we've looked at previously from Mr. Tonkin to you.

9 A. Yes.

10 Q. Do you see that? Okay. And then you respond on the  
11 same day to Mr. Hamish, and you say, "Good to meet you  
12 again also."

13 You say, "I don't believe your current license  
14 covers the usage of the Decision Simulator module, but let  
15 me check the contracts library. Blaze Advisor licenses are  
16 typically scoped by application area. Could you please  
17 supply me with a description of the applications you would  
18 like to use this within."

19 What did that mean?

20 A. Can you be more specific about which part?

21 Q. The second sentence.

22 A. Specifically?

23 Q. "Blaze Advisor licenses are typically scoped by  
24 application area."

25 A. Yes.

1 Q. What do you mean by that?

2 A. That is the default starting position for any  
3 discussion around licensing.

4 Q. What does that mean, "Typically scoped by application  
5 area"?

6 A. It means the use for a specific application only.

7 Q. Okay. Was it your understanding that Chubb's Blaze  
8 Advisor license was not scoped by application area?

9 A. My understanding from -- as noted previously -- was  
10 that it was a global license, which is the alternative to  
11 an application license.

12 Q. Oh, before we move on, in your response to Mr. Tonkin  
13 in the middle of the page marked 1978, you confirm that  
14 you're going to check regarding the scope of the Chubb  
15 license, correct?

16 A. Umm.

17 Q. You say, "I don't believe your current license covers  
18 the usage of Decision Simulator module, but let me check  
19 the contracts library."

20 Do you see that?

21 A. Yes.

22 Q. So you're confirming for Mr. Tonkin at Chubb Europe  
23 that you're going to check on the scope of the license.

24 A. That is what I offered, yes.

25 Q. Did you in fact check the contracts library?



1 A. No. I -- that is, as I've described earlier, that's  
2 the client partner's responsibility. So as you'll see in  
3 the remainder, that's something I asked them to look into.

4 Q. You sent it on to Mr. Moffat?

5 A. Yes.

6 Q. Okay. Then you write back to Mr. Tonkin that you've  
7 forwarded his request to the FICO account executive for  
8 Chubb, and you confirm that this is to cover commercial  
9 property insurance on a PAN-European basis, correct?

10 A. That's what was written, what I wrote, yes.

11 Q. And what did you mean by "PAN-European"?

12 A. So my understanding was that this application would be  
13 used for rating in multiple countries.

14 Q. Okay. So what did you mean by the term,  
15 "PAN-European"?

16 A. I think in this case it was meant as, you know, not  
17 exclusively in the UK.

18 Q. So other countries in Europe as well?

19 A. That was my understanding of what this application was  
20 designed to serve.

21 Q. And was Decision Simulator something that Chubb was --  
22 Chubb Europe was considering using on top of a Blaze  
23 program or in conjunction with a Blaze program?

24 A. Yes, it would. It's an add-on module to Blaze Advisor.

25 Q. Okay. Okay. Then Mr. Tonkin states, you know, "Please

1 get back to us ASAP with a pricing model."

2 And he says, "Hint: Don't make it too steep day  
3 one as it will make the business case in the future for  
4 global adoption less appealing."

5 Correct?

6 A. That's what he wrote, yes.

7 Q. Then you forward on this information to Mr. Moffat and  
8 say, "More information for you, Andy"?

9 A. That's correct.

10 Q. Then Mr. Moffat writes back on March 26th and says,  
11 "Quick question: Is Chubb not managed from the U.S.?  
12 Should the U.S. sales guys be doing this as they control  
13 the commercial relationship"?

14 Did you have an understanding of what he meant  
15 by, "Should the U. S. Sales guys be doing this?"

16 A. So my understanding is that he, he seems to be  
17 clarifying who has responsibility for quoting for new  
18 usages.

19 Q. And then Larry Jacobson writes back to Mr. Moffat with  
20 a copy to you and Mr. Collingwood and directs Mr. Moffat to  
21 reach out to Russ. That would be Russ Schreiber, correct?

22 A. That's correct.

23 Q. He -- and he says, "He did the original deal with  
24 Chubb, global Blaze ELA," correct?

25 A. That's what is written, yes.

1 Q. Turn back to Exhibit 57. You already reviewed this  
2 document, but I haven't asked you questions about it yet.

3 A. That's correct.

4 Q. Okay. And Mr. Moffat writes to Russ Schreiber: "Larry  
5 and Olly recently met with Chubb in London, and we are  
6 looking to do some work with them. One, additional Blaze  
7 license for commercial property European-wide). Two, check  
8 if they have Decision Simulator as part of the contract.  
9 Can you help here? Happy to crack on, but need site of the  
10 existing commercials and contract terms."

11 Have I read the email correctly?

12 A. That is what is written, yes.

13 Q. Okay. So Mr. Moffat is asking Mr. Schreiber to confirm  
14 and inform on the scope of FICO's license to Chubb,  
15 correct?

16 A. He is asking a couple of questions related to the --  
17 their license entitlement, yes.

18 Q. You mentioned he was newer to FICO at this time,  
19 correct?

20 A. Yes.

21 Q. And Mr. Schreiber gets back to him and says, "Chubb has  
22 global ELA for Blaze, but no simulator," correct?

23 A. That's right. That's what he was -- wrote here.

24 Q. And then Mr. Moffat responds, "Thanks, Russ. So to  
25 summarize, there's no additional licensing cost for this

1       except to included Decision Simulator."

2                   Do you see that?

3       A.   I do see that, yes.

4       Q.   Mr. Moffat starts out by inquiring of Mr. Schreiber  
5       whether there can be an additional Blaze license for  
6       commercial property in Europe, correct?

7       A.   He's asking based on unknown prior knowledge.

8       Q.   And Mr. Schreiber, in effect, says, "No. They have a  
9       global ELS for Blaze," correct?

10      A.   That is what's written here, yes.

11      Q.   And just to be sure, Mr. Moffat summarizes that there  
12      will be no additional licensing costs with the exception of  
13      the Decision Simulator, correct?

14      A.   He does summarize as you said, yes.

15      Q.   And there's no discussion in this email about the  
16      corporate structure of the Chubb entities, correct?

17      A.   I don't believe there is.

18      Q.   No discussion of who the parent company, if there is a  
19      parent company of Chubb Europe, correct?

20      A.   There doesn't appear to be any discussion of that type.

21      Q.   No indication that that's a relevant consideration at  
22      all in the determination of whether Chubb Europe is covered  
23      by the Blaze Advisor global ELA, correct?

24      A.   There doesn't appear to be a reference to that.

25      Q.   Turn back to Exhibit 58. The reason I'm going between

1       these is it appears there are parallel conversations  
2       involving the same topic among you and others at FICO.

3               On the first page of Exhibit 58, after  
4       Mr. Schreiber has responded to Mr. Moffat with a copy to  
5       you about the scope of the Blaze license to Chubb,  
6       Mr. Moffat writes to you and Mr. Jacobson with a copy to  
7       Collingwood, and at the bottom of the first page of  
8       Exhibit 8 states, "The Blaze license is an ELA and not  
9       country specific, so nothing to pay there."

10              Do you see that?

11       A.   That's written at the bottom of the first page, yes.

12       Q.   And then you write to Natalie Gundy. Who is she?

13       A.   She works in the sales support team. I believe she  
14       looks after renewals and other things relating to  
15       clients -- existing customers.

16       Q.   And you say, "Could you possibly pull the Chubb  
17       Insurance contracts relating to their licenses for Blaze  
18       Advisor?"

19       A.   Yes.

20       Q.   "We're trying to license an add-on Decision Simulator  
21       and need to know the terms of the original ELA for Blaze  
22       Advisor signed in the U. S.," correct?

23       A.   That's what it says here, yes. That's what I wrote.

24       Q.   And did Ms. Gundy send you the insurance contracts  
25       relating -- I'm sorry.

1 Did Ms. Gundy send you the licenses for Blaze  
2 Advisor?

3 A. I actually don't recall whether she did or not.

4 Q. Why, specifically, did you want to review the licenses?

5 A. So the -- I mentioned that the default model for new  
6 quotes is to follow an application license model. Decision  
7 Simulator is priced as a percentage of the underlying Blaze  
8 Advisor contract. So I believe it's a 20 percent add-on.

9 Therefore, to know how to -- or to have some  
10 guidance on how to appropriately price the add-on, I was  
11 interested in seeing what the overall contract value was.

12 Q. Getting back to Exhibit 59, you say to Mr. Moffat, "The  
13 application scope for the Decision Simulator add-on should  
14 be tied to a specific application. In this case, Chubb  
15 want to use it within their rating engine application for  
16 use when underwriting commercial property insurance on a  
17 PAN-European basis."

18 Do you see that?

19 A. Yes, I do see it.

20 Q. So you're providing details about Chubb's potential use  
21 of the Decision Simulator to Mr. Moffat for purposes of  
22 pricing?

23 A. I'm relaying what the customer had told me so that  
24 Mr. Moffat can develop a proposal himself.

25 Q. And you say, "Could you and Mark work on an alternative

1 model?"

2 And what did you mean by that?

3 A. My meaning was that it should be scoped by application  
4 area, rather than by any other measure.

5 Q. And then you say, "It should be attractive enough for  
6 them to procure for this project, with a model that allows  
7 them to expand their usage over time."

8 A. That's what I wrote, yes.

9 Q. So your goal was to have Chubb purchase the license for  
10 Decision Simulator and hopefully expand that usage?

11 A. That was actually the guidance that Hamish had given us  
12 at the few -- as I said earlier. "Don't make it too steep  
13 day one as it will make the business case in the future for  
14 global adoption less appealing."

15 Q. Okay. And your goal was to provide a price that would  
16 ultimately lead to global adoption?

17 A. Not necessarily, but one where the client could see  
18 that if they did want to expand their usage, then it would  
19 have -- there would be a known quantity. They wouldn't  
20 have to necessarily negotiate with the salesperson on the  
21 details on each occasion.

22 Q. Showing you what's been marked as Exhibit 60, let me  
23 know when you've reviewed this document.

24 A. Okay.

25 Q. Okay. So Exhibit 60 is the proposal that FICO provided

1 to Chubb Europe relating to Decision Simulator, correct?

2 A. This is the, yeah, the proposal that Andy sent to the  
3 client contact relating to that proposal, yes.

4 Q. That FICO provided to Chubb Europe?

5 A. Umm. So this was prepared by Andy Moffat on behalf of  
6 FICO.

7 Q. Okay. And the proposal he provided notes that, under  
8 (B), "Decision Simulator to be included in existing Blaze  
9 ELA contract," correct?

10 A. That is one of the terms, one of the items in this  
11 document, yes.

12 Q. And he states it would be regional UK license for use  
13 of Decision Simulator, correct?

14 A. That is what it describes here, yes.

15 Q. Okay. And you write to Richard, "Tactical error, too  
16 high, and scoped to UK only. Better to start lower and  
17 with a per-application scope," correct?

18 A. I wrote that, yes.

19 Q. Okay. So you did not think this was a good proposal  
20 that FICO made to Chubb Europe. Fair enough?

21 A. I believed that it was not in line with what the  
22 customer was asking for.

23 Q. You were aware that the customer planned to use it in  
24 several different countries, not only in the UK, correct?

25 A. According to the wording that Hamish confirmed, yes.



1 Q. I'm showing you what's been marked as Exhibit 62.

2 Let me know when you've had a chance to review  
3 the document.

4 A. Okay.

5 Q. Look at the second page of Exhibit 62. There's an  
6 email from Darcy Sullivan. Who is she?

7 A. He is our -- one of our public relations staff. I'm  
8 not sure of his exact title.

9 Q. At EMEA?

10 A. I believe he has somewhat of a global remit, but he is  
11 located -- his office is London.

12 Q. And he writes to Russ Schreiber with a copy to you and  
13 Lauren Dettloff. Who is Lauren?

14 A. She was one of the marketing leads attached to the  
15 global decision management suite line of business.

16 Q. Okay. Darcy Sullivan says, "Russ, Oliver mentioned  
17 these to me as possibilities for client news releases or  
18 case studies."

19 And in the subject line it reads, "Chubb and [REDACTED]  
20 case studies," correct?

21 A. That's correct. Yes.

22 Q. Okay. So you mentioned Chubb as a possibility for a  
23 client news release or case study?

24 A. That's right, yes.

25 Q. And what caused you to do that?

1 A. So there was a push at the time to develop more  
2 reference -- reference materials; and knowing that Chubb,  
3 or knowing what I knew of Chubb, it met -- it seemed like a  
4 good idea to suggest to Darcy, look, this is a potential  
5 candidate for something, whether it's, as I said, reference  
6 call or speaking at an event or case study or whatever it  
7 might be.

8 Q. What do you -- you said, Knowing what I knew of Chubb,  
9 it seemed like a good possibility for several things.

10 And what do you mean by that? What are you  
11 referring to when you say, "Knowing what I know of Chubb"?

12 A. Going back to what I said earlier today, around them  
13 being a good internal sales story, one that was used to  
14 show internal people what a client using Blaze Advisor in  
15 multiple instances might look like and knowing that we were  
16 building some relationships with other parts of the  
17 organization.

18 That's why it seemed like a good time to mention  
19 it.

20 Q. What do you mean, "Building relationships with other  
21 parts of the organization"?

22 A. So, you know, for example, the Chubb -- a number of  
23 Chubb contacts felt happy asking me for my advice as a --  
24 what I saw as a trusted adviser, which is one of the things  
25 we aim for.

1           So, for example, when Ewen reached out about this  
2 ratings thing, that's the kind of a relationship we want to  
3 build with the customer where they feel they can have a  
4 discussion with us, and we'll give them a trusted adviser  
5 answer. That's what I meant.

6       Q. So the breadth of Chubb's use of Blaze Advisor was one  
7 of the things that caused you to think of Chubb as a  
8 possible candidate for a client news release or an internal  
9 sales story?

10      A. Not just the breadth, but also the fact that we had  
11 local -- as in UK -- contacts, because again if we're  
12 organizing a regional, a user group, for example, we want  
13 to have people -- people are more likely to come if they  
14 are geographically located in the same area. So it was a  
15 combination of factors.

16      Q. And so you're saying, you're clarifying to Darcy, Chubb  
17 is managed from the U.S., but [REDACTED] isn't?

18      A. That was my clarification.

19      Q. Okay. And then you say, "Russ, as some background,  
20 Chubb Europe have continued to extend their usage of Blaze  
21 Advisor and are looking now to use it for a new rating  
22 engine," correct?

23      A. That's what I wrote, yes.

24      Q. Okay. And I think it goes without saying, since you're  
25 writing it in an email, but you were aware of Chubb

1 Europe's continued extension of its usage of Blaze Advisor,  
2 correct?

3 A. I was aware, yes.

4 Q. I'm showing you what's been marked as Exhibit 63.

5 A. Okay.

6 Q. So the first -- the earliest email in the chain is on  
7 page 931. And that's an email dated February 8, 2016, from  
8 you to James Chaban and --

9 A. Yes.

10 Q. -- you say, "I've had some interesting news from one of  
11 the global architects at Chubb. Could you please let me  
12 know who the CP is in the U.S.," correct?

13 A. Yes.

14 Q. Okay? What was the interesting news?

15 A. I believe it was this technology valuation topic.

16 Q. Is the global architect Hamish?

17 A. Yes.

18 Q. Okay. Then Mike writes and says, "Hi, Oliver. Things  
19 are interesting at Chubb right now. Do you have time to  
20 talk tomorrow morning?"

21 Right?

22 A. Yes. That's what he wrote, yes.

23 Q. Okay. And then you write back, still on February 8th,  
24 you say, "I've had word from one of the Chubb global  
25 architects that they are just about to go into a technology

1 contest of IBM-ODM, versus FICO Blaze.

2 "As I've done some work with this London team,  
3 I'm planning to visit him for lunch on Wednesday to find  
4 out a little more."

5 Correct?

6 A. Correct. That's what it says.

7 Q. IBM-ODM, what is that?

8 A. ODM is a -- on paper -- an equivalent product to Blaze  
9 Advisor from IBM.

10 Q. So Hamish had informed you that they were in the  
11 process of assessing IBM-ODM and whether to switch to that  
12 product from FICO Blaze?

13 A. I didn't want -- I wanted to find out more, I guess,  
14 when I met him, but, as I said, as it quotes here, they're  
15 just about to go into a technology contest of one versus  
16 the other.

17 Q. That's what I'm trying to understand. Was it your  
18 understanding at the time that a technology contest would  
19 be, "Let's try out IBM-ODM and see if that works better for  
20 us than Blaze or doesn't work as well"?

21 A. I'm not sure what I thought "contest" meant; but as an  
22 employee of FICO, I wanted to make sure that we were able  
23 to represent ourselves in that.

24 Q. Then Mike writes back to you, still on February 8th,  
25 and says, "I have not heard that from my contacts. In

1 fact, we are in discussions with them here in the states on  
2 two opportunities that would bolt on to/leverage Blaze.  
3 However, you should be aware that FICO has recently served  
4 Chubb with a notice of breach of their Blaze Advisor  
5 license based on their recent merger with ACE.

6 "We are currently in discussions with Chubb's  
7 vendor management office on this subject. Please do not  
8 discuss this topic with your contact or provide them any  
9 guidance as to what the scope of their license allows them  
10 to do."

11 Correct?

12 A. That's what was written by Mike, yes.

13 Q. Is this the first you learned of the dispute between  
14 FICO and Chubb?

15 A. I believe so. I remember being disappointed, but, yes,  
16 I believe this is the first I heard about it.

17 Q. And why were you disappointed?

18 A. Since my -- or one of my objectives was to encourage  
19 referenceability, this is not something which would help  
20 that to happen.

21 Q. By "encourage referenceability," you mean create a  
22 situation in which Chubb would be willing to provide  
23 references to potential FICO customers?

24 A. Yes, references being one thing, but attendance at --  
25 and presenting at customer forums being another, also case

1 studies, et cetera.

2 Q. Okay. Then you say, on the first page of Exhibit 63,  
3 "Hello, Mike. Can you be more specific on the nature of  
4 the dispute? I understand that ACE were licensed for Blaze  
5 Advisor some time ago, but have no idea whether it has been  
6 renewed or not or whether maintenance is being paid.

7 "Are there any topics you'd like me to bring up  
8 on Wednesday regarding current or future projects?"

9 Did you know at this time prior to receiving the  
10 email from Mike Sawyer that Chubb had merged with ACE?

11 A. I believe I had seen it in the news.

12 Q. Had you talked with anyone at Chubb about the merger?

13 A. No.

14 Q. Did it occur to you that the merger would create an  
15 issue with Chubb's license for Blaze Advisor?

16 A. I did not even consider that this would have an impact.  
17 Acquisitions and divestitures happen frequently, so I had  
18 not considered that aspect.

19 Q. Related -- so are you aware of any other instance in  
20 which FICO has taken the position that a license has been  
21 breached due to a merger or acquisition?

22 A. Yes. Again, as part of my role, that's not something  
23 that I would even be notified of.

24 Q. I understand, but I'm asking about your knowledge, just  
25 the extent of your knowledge on the topic.

1 A. And, furthermore, I'm not aware of anything that fits  
2 that description.

3 Q. In response -- oh, I guess you mentioned that you  
4 understood ACE was licensed for Blaze Advisor. Is that  
5 something you had involvement with?

6 A. I had no personal involvement in that, in the client or  
7 in anything around the licensing to that client.

8 Q. It's just something that you were generally aware of?

9 A. As a historic, as a historic record, yes.

10 Q. You then -- let's see. Mike asks for a phone call with  
11 you in response to your question about the nature of the  
12 dispute, and then you say, "Yes," you're available.

13 Did you end up having a phone call with  
14 Mr. Sawyer?

15 A. I remember speaking to Mike, yes.

16 Q. Okay. And tell me everything you recall about that  
17 conversation.

18 A. I don't recall an awful lot, I have to say. I think we  
19 talked about the client and just confirmed, I think, his  
20 guidance around not mentioning anything around the topic or  
21 any guidance around the scope of the license. So I cannot  
22 recall anything further.

23 Q. Did Mr. Sawyer say anything about Chubb's ability to  
24 use Blaze in Europe?

25 A. No. He did not advise of any -- he did not give any



1 guidance on that.

2 Q. Did he give you any information about Chubb's use of  
3 the Blaze software anywhere other than the United States?

4 A. I don't believe he did, no.

5 Q. So to the best of your recollection, the conversation  
6 similarly consisted of him confirming for you what he said  
7 in his email that you shouldn't discuss the scope of the  
8 Chubb license during your meeting on Wednesday?

9 A. Yes. So it was just confirming exactly what I should  
10 and should not do. And I believe I even -- I believe the  
11 meeting with Hamish had already been scheduled. And so I  
12 did question Mike, "Shall we still go ahead with the  
13 meeting?"

14 And I believe he -- again, my recollection is he  
15 said, "Yes, but just bear in mind these restrictions."

16 Q. The restrictions were, don't talk about the scope of  
17 the license?

18 A. These two he listed here, yes. Don't mention the  
19 matter and do not discuss what the scope of their license  
20 allows them to do, in his words.

21 Q. I'm showing you what's been marked as Exhibit 64.

22 MR. HINDERAKER: Thank you.

23 BY MS. JANUS:

24 Q. Let me know when you've had a chance to look at it.

25 A. Yes, I've reviewed it.

1 Q. So on February 11, 2016, you wrote to Mike Sawyer and  
2 said, "Hi, Mike. As promised, an update from yesterday's  
3 meeting. It looks as if Chubb are indeed proceeding with a  
4 technology rationalization project, triggered by the merger  
5 with ACE, that includes their usage of Blaze Advisor. ACE  
6 have (apparently) standardized on IBM's ODM."

7 Is that correct?

8 A. That is what is written here, yes.

9 Q. Okay. And then Mike says, "Thanks, Oliver."

10 Correct?

11 A. That's right.

12 Q. During the meeting that you had with Hamish and -- and  
13 this is the meeting with Ross Smith, right?

14 A. Yes.

15 Q. Do you -- did you at some point learn that Mr. Sawyer  
16 took the position with Chubb that the Chubb license for  
17 Blaze was limited to the United States?

18 A. Did I hear from Mike on that topic?

19 Q. Yeah.

20 A. Is that the question? I don't believe so.

21 Q. Would it surprise you if Mr. Sawyer took the position  
22 that the Chubb license for Blaze was limited to the  
23 United States?

24 A. I was not privy to the account planning for this  
25 account or any of Mike's strategies or plans.

1 Q. But if Mr. Sawyer took the position with Chubb that the  
2 Blaze license was limited to the United States, that would  
3 be inconsistent with Chubb Europe's continued work with  
4 FICO on Blaze, correct?

5 A. Sorry. Could you repeat the question one more time?

6 Q. Can you read it back?

7 (Record read as follows: "But if Mr. Sawyer took  
8 the position with Chubb that the Blaze license was limited  
9 to the United States, that would be inconsistent with Chubb  
10 Europe's continued work with FICO on Blaze, correct?")

11 THE WITNESS: Yes. I don't know exactly what is  
12 meant by "inconsistent."

13 BY MS. JANUS:

14 Q. We've gone through several documents here today in  
15 which you are part of conversations relating to the scope  
16 of Chubb's Blaze license, correct?

17 A. Several of these contain information that I was told  
18 about the meaning -- the scope, according to an  
19 interpretation. Sorry.

20 So, yeah, several of these documents contain  
21 information in which the scope is discussed.

22 Q. And that scope, according to Mr. Sawyer and  
23 Mr. Schreiber and Mr. Hill, was global, a global enterprise  
24 Blaze license, correct?

25 A. And also that was mentioned by the client as well.

1 Q. That's not my question, though. Please answer my  
2 question.

3 A. There were a number of mentions of global license.

4 MS. JANUS: Could you read back my question,  
5 please?

6 (Record read as follows: "Question: And that  
7 scope, according to Mr. Sawyer and Mr. Schreiber and  
8 Mr. Hill, was global, a global enterprise Blaze license,  
9 correct?")

10 THE WITNESS: It was described as global, yes.

11 BY MS. JANUS:

12 Q. Do you see that?

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Q. And we could go through others in which the license is  
17 described by FICO employees as "global," correct?

18 A. Yes. Sorry. I just didn't recall that specific  
19 mention.

20 Q. Mr. Hill described the license as global to you,  
21 correct?

22 Take a look at Exhibit 48 if you need to refresh  
23 your recollection.

24 A. Yes.

25 Q. Mr. Schreiber described the license as global, correct?

1 A. He did, yes.

2 Q. At the time when you were assisting Chubb Europe with  
3 its use of Blaze, you and others at FICO Europe checked to  
4 see whether that use was within the scope of the license,  
5 correct?

6 A. Yes. The information was received saying that this was  
7 a global license from both the client and from FICO.

8 Q. First from FICO, correct?

9 A. Yes. Yes.

10 Q. I'm going to be asking you about FICO's response to  
11 interrogatory number 4. Let me know when you've had a  
12 chance to review that.

13 A. I've reviewed the interrogatory.

14 Q. Okay. And this is signed by FICO on page 11, correct?

15 A. Yes. There is a signature there.

16 Q. Okay. And in response to interrogatory number 4, FICO  
17 takes the position in this lawsuit that Federal has  
18 disclosed the works, which FICO has defined as the Blaze  
19 software, to entities located in the UK, Canada and  
20 Australia.

21 Do you see that?

22 A. Yes, I can see that sentence.

23 Q. And then it states, "Which is in violation of the  
24 license granted by the agreement."

25 Do you see that?

1 A. Yes, I can see that sentence.

2 Q. Okay. So do you understand, based on Exhibit 67, that  
3 FICO has taken the position in this lawsuit that Chubb's  
4 use of the Blaze software in Europe was in violation of the  
5 license?

6 A. Yes, I am unable to draw a conclusion on that.

7 Q. You just don't know, based on reading this?

8 A. I lack the legal expertise to draw a meaning from it,  
9 from this within the context of the overall document.

10 Q. Okay. And if it was in fact the case that FICO was  
11 taking the position in this lawsuit that the use of Blaze  
12 software by Chubb in the UK was in violation of the  
13 license, that would be inconsistent with the statements  
14 we've reviewed by FICO employees and your work with Chubb  
15 Europe in connection with Chubb Europe's use of Blaze  
16 software.

17 Is that fair?

18 A. Sorry. Could you repeat the question, please?

19 Q. Is there something about the question you didn't  
20 understand?

21 A. Yes. That's why I'm asking for it to be repeated.

22 (Record read as follows: "Question: Okay. And  
23 if it was in fact the case that FICO was taking the  
24 position in this lawsuit that the use of Blaze software by  
25 Chubb in the UK was in violation of the lawsuit, that would

1 be inconsistent with the statements we've reviewed by FICO  
2 employees and your work with Chubb Europe in connection  
3 with Chubb Europe's use of Blaze software. Is that fair?")

4 THE WITNESS: Again, based on my limited ability  
5 to interpret these documents, it would seem as if they're  
6 not aligned.

7 BY MS. JANUS:

8 Q. I'm showing you what's been mark as Exhibit 69. Let me  
9 know when you've had a chance to review this document.

10 Have you reviewed it?

11 A. Yes.

12 Q. All right. Have you seen this document before?

13 A. I do not believe so.

14 Q. This is the FICO notice of termination of the Chubb  
15 license, correct?

16 In the middle paragraph, Mr. Carretta writes to  
17 Mr. Hopp at Chubb, "I notified you via email on March 11,  
18 2016, that FICO had become aware of a further material  
19 breach due to the use of the software outside the  
20 United States in two applications utilized in the  
21 United Kingdom."

22 Do you see that?

23 A. Yes.

24 Q. So does it appear to you that the use of Blaze by Chubb  
25 Europe was one of the reasons Mr. Carretta was citing for

1 the termination of the Chubb license?

2 A. Again, not having been familiar with the terms of the  
3 license, I had no way of knowing whether these applications  
4 were made available for the United Kingdom or were deployed  
5 in the United Kingdom, so that would be a -- I would be  
6 unable to say for sure whether the two were the same thing.

7 Q. Okay. So you're not sure whether Mr. Carretta is  
8 referring to the applications that you worked with Chubb  
9 Europe on over the years?

10 A. I'm not aware of any firm link. I mean, one might make  
11 an assumption that they are, but I don't happen -- I  
12 wouldn't want to assume that they were the same.

13 Q. You're just not sure.

14 A. I'm not sure whether they are the same.

15 Q. Okay. If they were the same, then this position would  
16 be inconsistent with your work on behalf of FICO in Europe  
17 with Chubb in Europe relating to Blaze, correct?

18 A. Again, looking at this in isolation and at face value,  
19 it would seem to be different to the guidance I had  
20 received from a number of individuals.

21 Q. Okay. So do you know of any FICO licenses that  
22 restrict where data resides or processes reside?

23 A. Yes. I can't answer -- I can't name any from memory.

24 Q. Mr. Clark, you understand you're still under oath.

25 A. I do.



1 Q. Okay. We've talked about many documents here today,  
2 and at one point I asked you in connection with one of the  
3 conversations relating to the scope of Chubb's license  
4 whether you had been asked to look into Chubb's corporate  
5 formation or the details of the legal entities that were  
6 using Blaze.

7 Do you recall that?

8 A. I recall the discussion.

9 Q. Okay. And my question to you, just to make sure the  
10 record is clear, is, Throughout your time at FICO, while  
11 you were working with Chubb, were you ever a party to a  
12 conversation involving individuals at FICO relating to  
13 Chubb's legal organization or the details of the entities?

14 A. My only information is from privileged communications.

15 Q. Okay. So at no point did you believe that the  
16 permissibility of Chubb Europe's use of Blaze was dependent  
17 upon or related to the structure of Chubb's corporate  
18 entities?

19 A. So, no, I had no interest in or insight into the  
20 structure of the legal entities on the client side.

21 THE COURT: All right. Thank you.

22 Members of the jury, we're going to take our  
23 break for the day now. The reason for that is this:  
24 Federal has one more witness to call in its case in chief;  
25 and due to circumstances beyond anyone's control connected

1 with the trial, that witness cannot get here until  
2 tomorrow. So Federal will call that witness tomorrow, and  
3 then I believe they will rest their case in chief.

4 At that point FICO has the option to put on a  
5 witness or more than one witness in rebuttal to FICO's case  
6 in chief. And I'm informed that they are considering  
7 putting on a single witness to do that.

8 So tomorrow the testimony will be completed. At  
9 that point, the lawyers and I have several hours of legal  
10 work that has to occur. It can't occur before the  
11 testimony is done, but it has to occur before you are given  
12 the case to deliberate.

13 So tomorrow, again, we will be ending early. And  
14 Wednesday morning, you will get instructions on the law and  
15 hear closing arguments and then start your deliberations.

16 So that's where things are. That's the process  
17 from here on out, and you may plan accordingly.

18 Okay?

19 All right. With that we are in recess.

20 THE CLERK: All rise for the jury.

21 1:58 p.m.

22 **IN OPEN COURT**

23 **(JURY NOT PRESENT)**

24 THE COURT: Go ahead and be seated.

25 Mr. Hinderaker, has your motion made its way onto

1 ECF yet?

2 MR. HINDERAKER: According to my watch, it  
3 hasn't.

4 THE COURT: Okay.

5 MR. HINDERAKER: I had a conversation over the  
6 lunch hour, and it should be soon.

7 THE COURT: Okay.

8 MR. HINDERAKER: In fact, I said when the witness  
9 was over with and we get a break, I would call the office  
10 and -- so that's what I know.

11 THE COURT: Okay. And, Ms. Godesky, will your  
12 side be filing a written response and, if so, how long  
13 would you need?

14 MS. GODESKY: We don't know what they're filing,  
15 but we can quickly file something, if we feel like we need  
16 a written response.

17 THE COURT: Okay.

18 MS. GODESKY: I understand time is of the  
19 essence.

20 THE COURT: Right. If you file anything, if you  
21 can file a response by 10:00 tonight, it will keep us on  
22 track, if you are able to make that.

23 MS. GODESKY: Okay. Understood.

24 THE COURT: Okay. Anything else we should be  
25 taking up here?

1 I know a representative from each of you will  
2 have to communicate with Miriam, and she'll meet with you  
3 down in 9E, when you're able to do that this afternoon.

4 Anything further?

5 MS. GODESKY: Not from defendants.

6 MR. HINDERAKER: Nothing from plaintiff. Well,  
7 we'll chat on the scheduling. I would like to read what  
8 was filed.

9 THE COURT: Right. That would probably be  
10 helpful.

11 MR. HINDERAKER: I think so.

12 THE COURT: Okay. With that then, we're in  
13 recess. We will see you tomorrow morning.

14 (Court adjourned at 2:01 p.m., 03-06-2023.)

15

16 \* \* \*

17 We, Kristine Mousseau and Renee A. Rogge, certify  
18 that the foregoing is a correct transcript from the record  
19 of proceedings in the above-entitled matter.

20

21 Certified by: /s/Kristine Mousseau  
22 Kristine Mousseau, CRR-RPR  
23 /s/Renee A. Rogge  
24 Renee A. Rogge, RMR-CRR  
25